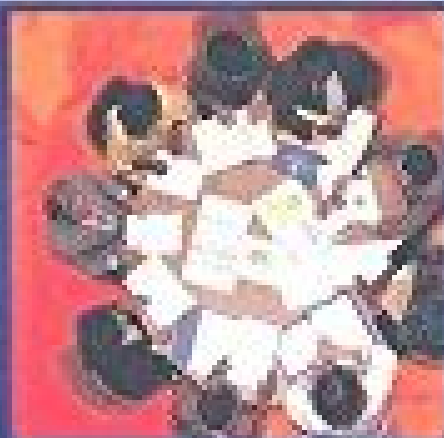




International
Labour
Office
Geneva

**Glossary of labour law and
industrial relations
(with special reference
to the European Union)**



**General editors
Gianni Arrigo
Giuseppe Casale**

GLOSSARY OF LABOUR LAW AND INDUSTRIAL RELATIONS
(with special reference to the European Union)

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General editors

Gianni Arrigo and Giuseppe Casale

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FOREWORD

The *Glossary on labour law and industrial relations* aims to give a comprehensive overview of the development and current status of labour law and industrial relations issues, including globalization and international labour standards. In this *Glossary*, the reader will find reference to current achievements, debates, ideas and programmes, as highlighted in the 2004 Report of the Director-General on the World Commission on the Social Dimension of Globalization, *A fair globalization: The role of the ILO*.¹ Moreover, there are cross-references to both international labour standards and European Union directives, resolutions and regulations. In this respect, the reader will notice that some of the definitions from the public domain are taken from legislative and specialized texts dealing with international standards and institutions in general.

The *Glossary* touches on the most relevant issues surrounding the global debate on the social dimension of globalization, and places labour law and industrial relations in this perspective. These issues have been summarized in the introduction to the *Glossary* for easy reference. The *Glossary* has been conceived as an educational tool, and aims to be a storehouse of practical definitions providing practitioners and scholars with advice and suggestions that may be taken into account in their day-to-day activities. The definitions given go further than suggesting specific tools, approaches and policies to practitioners. Employers, workers and government officials can also profit from this *Glossary* by familiarizing themselves with recognized and accepted international labour practices in a number of domains of interest to them. Therefore, even where definitions of certain industrial relations topics and/or standards are not of immediate practical relevance to their daily work, the *Glossary* should nevertheless give readers a useful perspective on the subject-matter in question, which can broaden their horizons, sharpen their awareness of possible future problems and ultimately be used when they are faced with specific challenges.

We hope that this *Glossary* can also contribute to the overall development of a sound social dialogue and industrial relations system at different levels of the economy. However, it is in no way intended to offer an exhaustive and detailed

¹ International Labour Conference, 92nd Session, Geneva, 2004.

Glossary of labour law and industrial relations

treatment of all labour law and industrial relations issues, but rather a reference tool on selected issues found in international instruments and/or social institutions. With this objective in mind, and to make the significant provisions of labour law and industrial relations more understandable to a wider audience, certain liberties have been taken by the authors when reformulating and, in several cases, simplifying the terminology involved. We hope that this has been accomplished without distorting the meaning of the various standards or their interpretation by the competent supervisory bodies. Moreover, we have sought, wherever relevant, to sketch the practices surrounding the various provisions and to elaborate on their significance and the possible utility of certain provisions for workers', employers' and government representatives. The *Glossary* should not be used or regarded as an authoritative text on individual international labour standards or on European Union labour law, but as an easy reference work for practitioners and scholars in the field of comparative labour law and industrial relations.

Gianni Arrigo
Giuseppe Casale
Geneva, April 2005

CONTENTS

<i>Foreword</i>	<i>v</i>
<i>Acknowledgements</i>	<i>ix</i>
Principles and rights in labour law and industrial relations: Crisis, stabilization and ongoing problems (<i>Gianni Arrigo and Guiseppe Casale</i>)	1
Globalization and fundamental rights at work: “Wealth of notions” and “poverty of rights”?	1
The “denationalization” of labour law and the tendency to internationalize fundamental rights at work	4
In search of a core set of fundamental social rights: The ILO Declaration of 1998	6
Industrial relations based on freedom of association and the right to collective bargaining	14
Harmonization of labour laws through the prohibition of slavery and forced labour	18
Discrimination in employment and occupation	20
A concerted effort to eliminate child labour	25
Conclusion: Ongoing problems in the application of fundamental rights at work	29
Glossary of labour law and industrial relations	33

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To all of them many thanks.

PRINCIPLES AND RIGHTS IN LABOUR LAW AND INDUSTRIAL RELATIONS: CRISIS, STABILIZATION AND ONGOING PROBLEMS

Gianni Arrigo and Giuseppe Casale

Globalization and fundamental rights at work: “Wealth of notions” and “poverty of rights”?

Of the problems posed by globalization, the safeguarding of social rights is one that has received particular attention and has fuelled a debate in which it is difficult to distinguish between rational arguments and those more strongly influenced by politics and ideology. A growing awareness is, however, emerging of the difficulties preventing rights and notions (such as those summarized in this *Glossary*), from being extended to all geopolitical contexts.

Thus, the difficulties involved in enabling large masses of citizens from developing countries to share in the benefits of development, including in terms of progressive access to the economic and social rights of citizenship – especially in the current situation of tension and international conflict in different parts of the world – are increasingly perceived as the greatest contradiction of our time. This contradiction is all the more evident if compared with the proliferation of international forums and the wealth of documents and instruments of varying degrees of solemnity that have been issued since the end of the Second World War with a view to protecting human and social rights.

A realistic (or pessimistic) observer might assert that the “wealth of notions” concerning international labour standards seems today to correspond to a “poverty of rights” actually being enjoyed by a large proportion of workers in the world. Even more, these rights are distributed unevenly. They are concentrated in certain geopolitical areas, and less so in others. According to this view, the low effectiveness of rights can be explained by the fact that many “charters of rights” have merely a moral suasion, since they are not equipped with effective judicial guarantees. Moreover, the proliferation of international and supranational forums for the protection of rights has thus far had only a relative impact on the exclusive supremacy of state sovereignty in this sphere. It is legitimate to ask ourselves how much of an impact this process will in fact be able to have: in other words, how effective will the supranational protection mechanisms be? And if more incisive international or supranational safeguards were created, it would be equally legitimate to wonder whether conflicts might

Glossary of labour law and industrial relations

arise between national and international Courts or whether the introduction of more guarantees at different levels might better define the scope of the provisions and generate synergies in the use of the instruments adopted.

Nevertheless, the above reasoning does not take account of the fact that other charters, no less numerous, provide more incisive forms of deterrence against breaches of human rights by safeguarding their minimum standards against States that fail to respect them. Nor does it take into account the fact that international law is increasingly becoming a means of channelling a (shared) ethic into the legislative traditions of individual States.

Through their charters and/or declarations of rights, the international organizations penetrate national legislative systems to inject a requirement to respect basic human rights. Until the First World War, the State was the only effective entity able to guarantee the protection of fundamental human rights, as it was able to provide protection from abuses by public institutions (therefore also from its own powers) and from abuses by private powers. We do not mean by this to deny the existence of limits to the degree to which fundamental human rights can be guaranteed at the international level. These limits are determined not only by the sphere of application and the effectiveness of the source of international law governing it, but also by the nature and substance of the obligation to respect the rights in question imposed by international law on the State, as well as by the enunciation of the right protected in each of the international laws. With respect to the enunciation of the protected fundamental rights, we know that a distinction can be made in international law between absolute rights and rights subject to limitations.

Included in the first category are those rights set forth in such a way that States have no way of limiting their scope. The second category contains those rights for which it is possible to have limitations. In this sense, States can define and restrict the way the rights are exercised on grounds of public order, national security, the protection of health or public morals. In terms of scope and content, these are subject to variations from one State to another and from one situation to another, as long as limitations are justified and do not result in the rights being limited in a way that is incompatible with their very nature, or for that matter abolished.

Rights that are a manifestation of individual freedoms, such as freedom of movement, expression, association and assembly (fairly frequent in “social charters”), are often seen as being subject to limitations, while others, such as the right to a fair trial, are considered to be absolute. Once again, the prevailing conditions – normal or exceptional – can influence the scope of the restrictions that can be applied by a State at any given time: more specifically, and with reference to events that have become more frequent in the past 15–20 years, the permitted degree of restrictions to individual freedoms obviously differs between times of peace and times of war.

This distinction does not coincide with that between mandatory and non-mandatory rights, although it has some points in common with it since the absolute rights are usually also mandatory, and vice versa. But the opposite also holds. To give just one example, the right to a fair trial is not subject to limitations in the International Covenant on Civil and Political Rights (1966), but is not referred to as being mandatory in Article 4 of the Covenant. Article 6 goes on to say that “no one shall be arbitrarily deprived of his life” and to impose a series of limits to the application of capital punishment by States that have not yet abolished it.

The obligation to protect the fundamental rights for which an international guarantee exists, deriving from customary law, or from charters, declarations or similar instruments, normally applies regardless of the level to which the State protects each individual right. In general, international laws leave it to the constitutional order of the signatory States to provide for the necessary measures to implement the protected rights. In this respect, the International Covenant on Civil and Political Rights, which envisages an immediate implementation requirement, merely provides for each of the contracting States to “[undertake] to take the necessary steps, in accordance with its constitutional processes ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant” (Article 2).

The type of measure and the degree to which their domestic legislation protects the rights are therefore left to each signatory State which, in accordance with its constitutional rules, can decide the level – State, sub-State, or local – at which to ensure that the protection required by the international legislation is put in place. This does not alter the fact that, from the point of view of international law, responsibility for implementation and for any breaches of the law lies with the State, as the party required to meet the international obligations contemplated by the provision in question.

This last consideration also holds for any national-level decisions to ensure the protection of rights envisaged by international laws at some other level by delegating the observance of such laws to international institutions set up in association with other States. This is the case when state functions, the exercise of which involves the respect of the fundamental rights of individuals and may also involve the breach of the same, are transferred in full to international institutions. While each State is free to make a choice of this type, this does not make it any less responsible for the implementation of any international provisions that apply to it. For example, in the case of the 25 European countries that are members of the European Union (EU), the supranational body carries out the state functions transferred to it by Member States through the treaties. On the basis of these functions, it can maintain direct relations with individual actors that in other respects are subject to the sovereignty of the Member States.

Glossary of labour law and industrial relations

In sectors of EU competence, in cases where individuals come into contact with EU legislation and institutions, the protection of their fundamental rights is the responsibility of the institutions, as the European Court of Justice has stated on a number of occasions. But this does not remove the international responsibility of Member States, which have undertaken through the international treaties to respect their citizens' fundamental rights. What is still lacking (and the future European Constitution should fill this gap) is an assumption of international responsibility by the EU in this respect, apart from those cases where the obligation to respect certain rights derives from customary laws that the EU is obliged to respect as an entity subject to international law.

From the point of view of the covenants, the European Community and the EU are not yet, however, autonomous parties to any international treaty concerning fundamental rights and cannot therefore be held liable for any breaches of these rights while performing the functions transferred to them. In the event of fundamental rights being breached by EU institutions, only Member States would be accountable in the eyes of the international supervisory procedures envisaged by the Conventions to which the Member States themselves are party.

The “denationalization” of labour law and the tendency to internationalize fundamental rights at work

The linkage between fundamental rights at work and international law is largely due to global economic integration, which weakens government's intervention in macroeconomic and social policies. One reason for this is that the number of companies obliged to be competitive in a given location is becoming smaller, and the number of locations competing on the international market to attract capital is increasing. As a result, States are competing to offer transnational economic actors the best tax, legislative and social conditions to attract investment.

This progressive erosion of state sovereignty also affects the “rich countries”. However, it should be noted that lowering labour costs and growing production and taxation incentives are not the only factors guiding decisions by multinationals to move capital from one country to another. As shown by several United Nations reports on development since the early 1990s, important macroeconomic and cyclical factors, technological changes and labour market rigidities also play a part in these decisions. The increasing divergence between the state dimension and the economic dimension was brought to predominance by the economy of finance over social issues. This has placed the decline of sound employment policies at the centre of macroeconomic national strategies.

Against this background, the question of the social dimension of globalization is once again being raised on the world stage. More specifically, we refer to the

Report of the Director-General of the ILO on the World Commission on the Social Dimension of Globalization entitled: *A fair globalization: The role of the ILO* (2004).¹ In this report, among other things, the Director-General raises the crucial question of strengthening the system of international labour standards with a view to consolidating firm action on cases of grave and persistent abuse of fundamental principles and rights at work.

The gap between the self-referential tendency of labour law and the transnational tendencies of trade relations has created scenarios in which the developments of globalization give rise to strong pressures towards national deregulation and privatization policies, with a reduction in the role of social security and welfare systems. These pressures are sweeping away individual local rationalities, leaving it up to the market alone to “harmonize”, often regressively, national industrial relations systems and existing employment standards, threatened by the intensification of international competition and by the consequent processes of delocalization of production at the global level.

The rapid growth in international trade in goods, services and capital has therefore led to an extremely marked “delocalization” of economic activities, which does not appear to be adequately counterbalanced by bilateral, multilateral and supranational regulatory systems. One consequence of the delocalization of the market and of the economy is the “denationalization” of labour law. The loss of state control of economic and financial mechanisms confirms the weakness of the entire structure on which national labour legislation is based and reduces the margins available to nation-States to impose on firms operating in their territory the constraints and cost burdens involved in protecting workers through labour law. Another consequence is the deconstruction of labour law. Recourse to public order and to the *lex loci* for the protection of workers is in fact a short-sighted defence against the international mobility of industrial production as a source of employment. Nowadays, companies and entire sectors of industry can to a large degree geographically subdivide the added value production chain. At the same time, the transnationalization of companies tends to destroy “economic nationality” and enable groups of firms to shop around in the various local legal and contractual systems on the basis of their specific levels of social protection.

The most evident effect of these processes is an imbalance between economy and State, a fundamental disproportion between the national political institutions and the transnational economic forces that need to be supervised and monitored. The rapid proliferation of alternative sources of supranational regulation created to foster collaboration in wider geographical areas than those circumscribed by

¹ International Labour Conference, 92nd Session, Geneva, 2004.

individual communities of nations should be read in this light: in systemic terms, the emergence of a plurality of legal orders that can be superimposed over any specific territory or establish a form of non-territory-specific law. This process unfolds in two ways. On the one hand, we have the establishment of international intergovernmental organizations, each with its own systems of rules and provisions that vary in scope and which – as in the case of the European Community – regulate (at least) economic phenomena that extend beyond national borders. This can be on a regional (e.g. NAFTA or MERCOSUR) or on a global scale (World Trade Organization). On the other hand, we have stronger tendencies to harmonize aspects internal to States through the imposition of uniform standards.

However, during the current transition phase between national systems in a state of crisis and supranational sources that are progressively – albeit slowly and unevenly – becoming more firmly established, the regulatory interconnection of the economic and social dimensions, although flourishing in terms of analysis and proposals for intervention, still depends on specific bilateral and sectoral negotiations. This will be the case until we find a stable political solution that is able, at the multilateral level, to consolidate instruments and mechanisms to govern the social dimension of international trade.

In search of a core set of fundamental social rights: The ILO Declaration of 1998

The international debate on fundamental social rights in the context of globalization has focused for some years on identifying a minimum basis of fundamental rights to be applied universally. As we have observed, one of the most significant consequences of globalization in recent years has been the proliferation and superimposition of centres of production and practices that support the concept of multi-level protection of fundamental principles and rights at work. (This situation is common in federal systems and is a feature of the legal system of the EU.) These include national provisions, the European Convention on Human Rights (1950), the Council of Europe's European Social Charter (1961, revised in 1996), the Community Charter of the Fundamental Social Rights of Workers (1989), and above all the Charter of Fundamental Rights of the European Union (2000), which is now incorporated in the Treaty establishing a European Constitution of October 2004.

To these charters should be added the international declarations expressed in various ways through national Constitutions. For example, in Europe there are three levels of jurisdiction: the national one, that of Strasbourg (the European Court of Human Rights) and that of Luxembourg (the Court of Justice of the European Communities). The question of whether more judges and more charters are an advantage or a disadvantage is one that has been debated for years. At the theoretical level, the pros and the cons seem to be evenly balanced. Here we can only add that multi-level protection does not in itself encourage

“law shopping”. We need only consider in this respect that the provisions relating to the European Court of Human Rights act in a subsidiary manner, that is, only if domestic legal channels have been pursued without success. State responsibility comes into play only if the State itself has not succeeded in making good the violation of the right. Nevertheless, there is a delicate problem of recognition by the courts: not an easy subject if we consider that, according to the traditional models, the order whose court is the body of closure, that is, able to pronounce the final word, is considered to be sovereign.

This multi-level structure is supplemented (or made more complex) by corporate codes of conduct operating within companies’ systems of governance, which are influenced by multinational guidelines such as those of the Organisation of Economic Co-operation and Development (OECD) and the ILO. The existence of such a range of sources is nothing new for those working in and studying labour law and industrial relations, accustomed as they are to addressing the system of regulation resulting from collective bargaining, trade union and employer practices, and the law. Scholars and practitioners are also aware that the borders between these legal orders can be uncertain, and subject to change. But it is in this dynamic relationship between diverse legal orders that the capacity of labour law to contribute to the equality of capabilities is determined. The extension of labour law beyond national borders, through ILO standards, regional treaties and the codes of multinational enterprises, provides the unions, national governments and non-governmental organizations (NGOs) with the opportunity to apply higher standards.

It has long been recognized, therefore, at least at the drafting level, that some fundamental principles and rights at work need to be respected at all events, regardless of the level of development of the country. While the laws on employment conditions (especially pay) depend on the state of economic development of each country, the fundamental rights can be conceived as preliminary conditions for the free market. Only where the fundamental rights have been defined and respected, it is said, will the labour market function in such a way as to enable a real improvement in employment conditions and a fair distribution of resources and the benefits of economic progress. These rights essentially take the form of internationally recognized human rights, sanctioned at the level of customary law, charters or similar provisions, and therefore binding on the international community.

The ILO has been active in putting forward the protection and respect of some of the fundamental human rights. In 1994, on its 75th anniversary, the Organization initiated a debate on its mandate and mission for the next century. The themes covered in that debate range from the role played by legislative activity to the reinforcement of the supervisory system, touching on how to promote Conventions dealing with fundamental human rights. Again in 1994, during the Uruguay Round of multilateral trade negotiations, the

participating countries decided to introduce a reference to international labour standards.

In 1995, at the World Summit for Social Development the Heads of State and Government defined a social plan based on ILO standards for the global economy. The Copenhagen Declaration on Social Development declared their intention to “pursue the goal of ensuring quality jobs, and safeguard the basic rights and interests of workers and to this end, freely promote respect for relevant International Labour Organization conventions, including those on the prohibition of forced and child labour, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination” (Part C, Commitment 3(i)). In this way, they in effect pre-selected the “fundamental” Conventions that the ILO espoused three years later in its Declaration on Fundamental Principles and Rights at Work. Such a commitment reasserted the consensus around the promotion and application of fundamental rights at work.

In 1996, at the end of the Ministerial Conference of the newly established WTO (Singapore, December 1996), in paragraph 4 of its final declaration, the representatives of the participating States adopted the following text: “We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them.” In the same paragraph, the ministers reject the use of labour standards for protectionist purposes and conclude by stating that the comparative advantage of countries must in no way be put into question.

Meanwhile, that same year the OECD published a study on fundamental rights at work and international trade. The study concluded that failure to respect freedom of association did not translate into a commercial advantage.

The ILO took all these reflections and initiatives into account in the Director-General’s Report to the 85th session of the International Labour Conference (1997),² containing proposals on the adoption of a solemn declaration on the fundamental rights. The question was then inserted in the agenda of the 86th Session of the International Labour Conference (1998), which adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up. Taking its inspiration from its own Constitution, the ILO’s 1998 Declaration is a new type of legal instrument, distinguished by its promotional nature from the other international agreements on employment. The intention is to encourage ILO Member States to observe a certain number of the Organization’s essential principles.

² ILO: *The ILO, standard setting and globalization*, Report of the Director-General, International Labour Conference, 85th Session, Geneva, 1997.

The adoption of the Declaration, which as mentioned above was the outcome of a course of action embarked upon at the Copenhagen World Summit for Social Development, set the seal on the universal acceptance of a set of core labour standards that are recognized as having a special status in the context of the global economy. By virtue of the constitutional value of the Conventions recognized as being “fundamental”, both within and outside the ILO, the 1998 International Labour Conference declared that –

all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

At the time the Declaration was adopted, seven Conventions were considered to be fundamental:

- (a) Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- (b) Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- (c) Forced Labour Convention, 1930 (No. 29)
- (d) Abolition of Forced Labour Convention, 1957 (No. 105)
- (e) Minimum Age Convention, 1973 (No. 138)
- (f) Equal Remuneration Convention, 1951 (No. 100)
- (g) Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Worst Forms of Child Labour Convention (No. 182), which was adopted in June 1999 and entered into force on 17 November 2000, was added later.

The Declaration underlines that the Organization is obliged “to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources” (para. 3). The Declaration expressly indicates that these means include the mobilization of its own resources and external support, and

Glossary of labour law and industrial relations

that the Organization should encourage other international organizations with which it has established relations to support these efforts.

More specifically, paragraph 3 lists three forms of support:

- (a) offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
- (b) assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and
- (c) helping the Members in their efforts to create a climate for economic and social development.

Paragraph 4 of the Declaration specifies that the follow-up, which must be “meaningful and effective”, is an integral part of the Declaration.

Finally, taking up the conclusions adopted by the WTO Ministerial Conference in Singapore in 1996, the last paragraph “stresses that labour standards should not be used for protectionist trade purposes, and that nothing in [the] Declaration and its follow-up [should] be invoked or otherwise used for such purposes [...]”. In addition, “the comparative advantage of any country [should] in no way be called into question by [the] Declaration and its follow-up”.

The Follow-up is the key element of the Annex to the Declaration. It is divided into four parts, the first three of which are as follows: Overall purpose (Part I); Annual follow-up concerning non-ratified fundamental Conventions (Part II); and the Global Report (Part III). Part IV establishes that proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions, and that the Conference should “in due course” review the operation of this Follow-up to assess whether it has adequately fulfilled its overall purpose.

The Follow-up consists of three elements: a review of the annual Country Reports; a Global Report; and the definition of priorities and action plans for technical cooperation. In operational terms, the Follow-up consists of significantly reinforcing the ILO’s technical cooperation through the use of a number of instruments, in order to achieve greater respect for the principles and the fundamental rights of workers. In general terms, the aim of the Follow-up is to “encourage the efforts” made by the Members of the Organization to promote the fundamental principles and rights reaffirmed in the Declaration. In keeping with this strictly promotional objective, the Follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights (paragraphs I.1 and I.2). The Follow-up “is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning;

consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of [the] follow-up” (para I.2).

This provision has a double objective: to avoid weakening the existing supervisory mechanisms; and to avoid, where possible, double supervision of Member States.

As part of the annual review process, the countries for which the Director-General of the ILO has not yet recorded the ratification of any of the fundamental Conventions must submit the reports required on the basis of Article 19.5 (e) of the ILO Constitution. The Follow-up to the Declaration therefore renews an existing obligation, on the basis of which the countries are required to present a report on the state of their legislation and the actions undertaken in the sectors regulated by the Conventions that they have not yet ratified (see in this respect the above-mentioned Article 19.5).

In June 2004, under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, the first Report of the second cycle of Global Reports was published. Entitled *Organizing for social justice*,³ it comes four years after the first Global Report on freedom of association and the effective recognition of the right to collective bargaining, also known as *Your voice at work* (June 2000).⁴

Organizing for social justice continues the assessment of current trends begun in *Your voice at work*. Of course, the picture is mixed. Despite a general positive trend, linked to the spread of democracy, high rates of ratification of the fundamental international labour standards and increased transparency in global markets, serious problems remain. Violations of freedom of association of both workers and employers persist in different forms, including murder, violence, detention and refusal to allow organizations the legal right to exist and function.

According to the 2004 Report, positive developments have continued to take place in a number of countries. Yet it is important to note that without further enabling measures, political will in itself does not guarantee results. In fact, as was shown by *Your voice at work*, structural change and globalization have posed serious challenges to traditional methods and structures of representation of workers and employers, as well as to the way of conducting collective bargaining. These structures are being reviewed and adjusted, although organizational change is arguably not as rapid as that of economic actors and activity. Workers' organizations have sought to boost their strength, for example through mergers and increased national and international cooperation. Coverage of collective

³ Report I(B), Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 92nd Session, Geneva, 2004.

⁴ *ibid.*, 88th Session, Geneva, 2000.

Glossary of labour law and industrial relations

bargaining has continued to spread to new categories of salaried workers. Some employers' organizations have merged with industry federations or coordinated their activities more closely. On the employers' side, this may well mean a close integration between the functions of managing labour relations and strategic decisions by enterprises on investment, production and location.

The question of which level is more appropriate for collective bargaining (centralized or decentralized) continues to elude simple answers. On closer study, enterprise-level bargaining may well be desirable for rapid adjustment, although it may shift responsibility and burdens to the weakest without providing for adjustment measures at the industry-wide or national level. The answer depends closely on the strength and capacity of employers' and workers' organizations at each level. Centralized bargaining may provide for longer-term economic adjustment measures at the national level and, in the process, support governments' economic development strategies. It goes without saying that success stories can be found at each level of bargaining. There is also a need, as the Report says, to establish for each country the optimal mix between what is negotiated centrally and what is more appropriate for local bargaining. It is misleading to see different levels or methods of bargaining as being mutually exclusive.

More recently, there has been an increase of the so-called framework agreements concluded between multinational companies and global trade union federations. The forums for such negotiations can be consultative structures such as international or European works councils. Framework agreements aim to ensure the respect for basic principles, such as freedom of association and collective bargaining, throughout the enterprise. Most of the agreements signed to date cover subsidiaries and some extend to joint ventures, suppliers and subcontractors. Given that framework agreements often include follow-up procedures and mechanisms to deal with problems that cannot be solved at the local level, they can also help to improve dialogue between management and labour throughout the enterprise.

In addition to other findings, the ILO Global Report *Organizing for social justice* looks at an unexplored area, the informal economy, where economic actors must be given the right to organize. Of course, it is inconceivable that there should be fully viable representative structures for only a fraction of the workforce and employers. Through alliances, assistance and cooperation, workers' organizations can reach out to those who are organized in the informal economy. Employers' organizations have direct links through subcontracting and other commercial arrangements, as production chains extend deep into the informal economy. One issue facing employers is how to foster respect for fundamental rights without hampering the potential for entrepreneurship and growth in the informal economy. Today the fact remains that neither employers' nor workers' organizations can, by themselves, fill the growing governance

deficits in the informal economy that were identified by the 90th Session of the International Labour Conference in June 2002.

A generally positive trend over the last few years has been the recognition of the importance of social dialogue to economic and social policies and, even more, to good governance. It should be noted that for the ILO, the working definition of social dialogue (as reflected in this *Glossary*) covers all types of negotiation, consultation or exchange of information between, and among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. Freedom of association and the right to collective bargaining are essential enabling conditions for, as well as elements of, the proper functioning of social dialogue.

The interrelationship between social dialogue and freedom of association and the right to collective bargaining is reflected in the large extent to which cooperation and advisory services are provided to Member States of the ILO under the Follow-up to the Declaration. In this context, it should be noted that the effective recognition of the right to collective bargaining is embedded in a robust conception of freedom of association that reaffirms the need for democratic governance to infuse working people's lived experience. As a means for achieving and promoting dignity at work, it reflects both the process and the opportunity of freedom that are integral to the problems of development. Linking freedom of association with effective access to collective bargaining not only recognizes rights and freedoms, but also gives participants the means (or voice) through which to make their needs known, and in a way that enables the social partners to seek to meet the needs within and beyond the workplace. In a sense, the empowering capacity of freedom of association and the right to collective bargaining is part of a broad notion of freedom, recognizing that protection cannot simply be conferred; rather, stakeholders must play an integral role in articulating their needs. Like other rights, freedom of association and the right to collective bargaining are not pivotal in inducing social responses to economic needs, but they are themselves also central to the conceptualization of economic need.

Finally, the Report looks at the relationship between freedom of association and the settlement of labour disputes. This is interesting, especially in societies in economic transition. In a centrally led single-union system, labour conflicts were not supposed to exist; to the extent that they existed, they were dealt with by the centralized structure. When economic transformation leads to insecurity and unemployment, if no appropriate mechanisms are in place to deal with their effects with the full participation of those concerned, any protest action and conflicts that erupt are dealt with by the law enforcement authorities and criminal charges may be brought against the leaders of such action. In contrast, such conflicts need to be addressed within a labour relations framework, through bargaining, consultation and properly functioning mechanisms for preventing

Glossary of labour law and industrial relations

and settling disputes. To this end, it is essential to recognize workers' right to organize and choose their own representatives to negotiate on their behalf.

Industrial relations based on freedom of association and the right to collective bargaining

At the same time, it should be noted that sound industrial relations are based on the full recognition of freedom of association and the right to collective bargaining. The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), recognizes (Article 2) that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization”.

The actors covered by this Convention are the organizations set up by public and private sector workers, without distinction as to employment, gender, colour, race, religious beliefs, nationality or political opinions, and by employers, for the purpose of promoting and defending their interests. These organizations need to have full internal autonomy, and therefore the right to draw up their own constitutions and rules, elect their own representatives, and organize their own administration. To guarantee freedom of association, Article 4 declares that “(w)orkers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority”, while Article 5 attributes to workers’ and employers’ organizations the right to establish federations and confederations, which must in turn have the right to affiliate with international organizations.

The purpose of Convention No. 87 is therefore to guarantee the possibility of the existence of a plurality of unions and employers’ organizations, a fundamental requirement for the effective exercise of freedom of association. An “intrinsic corollary” of freedom of association and the right to organize is the right to strike which, although not recognized or expressly mentioned in any ILO standards, has been defined by the Committee on Freedom of Association of the Governing Body of the ILO, and considered by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) as being protected by Convention No. 87.

Complementary to Convention No. 87 is the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). This Convention aims to guarantee that all “(w)orkers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment”. This protection must apply to all “acts calculated to: (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership”, thus underlining that this protection applies to all acts that, as a result of union membership, might “cause the dismissal of or otherwise prejudice a worker” (Article 1).

Article 4 of Convention No. 98 establishes that “(m)easures appropriate to national conditions shall be taken, where necessary, to encourage and promote”

voluntary negotiation between employers or employers' and workers' organizations, with a view to reaching agreements regulating terms and conditions of employment and defining the relations between the associations. The key principles of collective bargaining are the free and voluntary nature of the bargaining, the choice of level of the same and the principle of good faith. Other Conventions and Recommendations on collective bargaining referred to in this *Glossary* were adopted subsequently.

The Universal Declaration of Human Rights covers freedom of peaceful assembly and association from the civil and political point of view (Article 20), and that of the individual's right to form and to join trade unions for the protection of his or her interests (Article 23.4). Freedom of assembly and association, together with freedom of expression, are therefore core elements of the category of political rights, since they are the foundation for all the activities of a civil society, especially with respect to participation in the process of democratic development, and each activity regarding the private sphere of the individuals making up that society.

The issue is covered in greater detail in the two international covenants of 1966 – the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The International Covenant on Economic, Social and Cultural Rights, in particular, expressly envisages in Article 8.1 (a) the commitment of States to ensure “the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests”, and that “(n)o restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others”. Freedom of association is also acknowledged in the International Covenant on Civil and Political Rights which, in Article 22.1, recognizes that everyone shall have the right to freedom of association, “including the right to form and join trade unions for the protection of his interests”.

The position of the European Community and the European Union with respect to principles and standards established at the international level, which include the principles of freedom of association and right to collective bargaining, and the others included in the ILO Declaration of 1998, has changed considerably during the 50-year process of European integration, especially as a result of the contribution made by the European Court of Justice. The Community has progressively abandoned its position of neutrality and moved towards a formal recognition of the fundamental rights, with legislative Acts at the Community level.

An important step in this direction was the Community Charter of the Fundamental Social Rights of Workers (signed in 1989 by all the Member States apart from the United Kingdom, which changed its position in 1997). This was

the first attempt at codifying the fundamental social rights at the Community level. The formulation of the Charter, which was drawn up to provide more incisive social provisions than those adopted by the Single European Act of 1986, draws on the content of various ILO Conventions and expressly declares, in its Preamble, that inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe.

Although the circumstances of its adoption (the initial, subsequently withdrawn, dissent of the British Government) and the form in which it is drafted prevented it from acquiring prescriptive force and binding effect within the Community legislative order, the Charter of the Fundamental Social Rights has had a considerable influence on the subsequent development of EU social policy, both in terms of sources and of the Commission's administrative activity. The working programme of this institution has focused on the application of the principles set forth in the Charter, which are developed from principles and concepts contained in various ILO provisions, as adapted to the different legislative context of the EU.

The principles and standards established at the European level are therefore influenced by the ILO Conventions and Recommendations, perhaps more than by other international principles and standards. This is also the effect of the long cooperation that has existed formally since 1958 between the ILO and the European Communities. Over the years the two organizations have strengthened their mutual ties in order to achieve convergent objectives, especially in the promotion of "decent work". In effect, the creation of better employment opportunities for men and women was declared to be one of the ILO's strategic objectives. The EU, for its part, has developed an employment strategy that seeks to maximize the employment potential of the European economy, while at the same time respecting the principle of gender equality.

The recognition of the fundamental social rights for Community policy is also contained in Article 136 of the Treaty establishing the European Community (TEC), 1992, which states that the Community and Member States have set European social policy objectives "having in mind fundamental social rights such as those set out in the European Social Charter [...] and in the [...] Community Charter of the Fundamental Social Rights of Workers". The reference in Article 136 to the fundamental social rights, which supplements the reference to the respect for human rights and the fundamental freedoms as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, has the by no means negligible effect of helping legitimize the legislative activity of the Community Member States and institutions. It also imposes on them – assuming that rights already attributed to workers are an expression of fundamental social rights – a requirement not to introduce regressive amendments.

In addition to the traditional aim of an improvement of living and working conditions that enables their harmonization while the improvement is being maintained (a goal already contemplated in the EEC Treaty of 1957), Article 136 includes as objectives of the Community and Member States the promotion of employment, proper social protection, social dialogue, the development of human resources with a view to lasting high employment and the combating of exclusion. In this way, the concept of European social policy acquires a new and more complete dimension that brings it considerably closer to the strategic objectives identified by the ILO as being instrumental to the achievement of its mandate in the context of globalization: the fundamental principles and rights of workers; the promotion of employment for men and women; improved social protection; and the promotion of social dialogue. These are objectives which, taken as a whole, are the essence of “decent work”.

The Charter of Fundamental Rights of the European Union, signed at Nice in December 2000, is now incorporated in the new Treaty establishing a European Constitution, signed in Rome on 29 October 2004. The principles and rights set forth in the ILO Declaration of 1998 are now expressed in Articles 5 (Prohibition of slavery and forced labour); 12 (Freedom of assembly and of association); 15 (Freedom to choose an occupation and right to engage in work, which includes rights such as access to the labour market by nationals of third countries residing legally within the Community); 21 (Non-discrimination); 23 (Equality between men and women); 28 (Right of collective bargaining and action); and 32 (Prohibition of child labour and protection of young people at work). To these rights and principles should be added the ones set forth in Articles 27 (Workers’ right to information and consultation within the undertaking); 30 (Protection in the event of unjustified dismissal); 31 (Fair and just working conditions); 33 (Reconciliation of family and professional life); and 34 (Social security and social assistance).

The incorporation of the Charter in the Treaty of Rome of October 2004 has raised a series of criticisms concerning its legal value. No doubt, being a Constitution the Charter is more than a mere recognition of rights, but rather a substantive benchmark for all actors in the Community and in a position to interfere with all other juridical systems of countries that maintain permanent relations with the EU. In consideration of the recent evolution of the EU juridical system, the position of the EU on the subject of the respect of the fundamental labour rights therefore appears to be positive, especially as regards respect for and receptiveness to the international community, since it is in line with the action undertaken by the ILO, the organization universally recognized as having competence in this regard. In view of the Community’s links with developing countries, its action could prove to be particularly incisive. In this respect, the decision to include workers’ fundamental social rights in the

European Constitution is a quality leap in Community policy, while at the same time being a test bed for the seriousness of the same.

Harmonization of labour laws through the prohibition of slavery and forced labour

The abolition of slavery and forced labour has been a key element of the work of the ILO since the post-war years, in parallel with the development of action on the part of the international community against slavery. In signing the Forced Labour Convention, 1930 (No. 29), ILO Member States undertook to abolish forced labour, understood as all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily.

This broad definition was later refined in the Abolition of Forced Labour Convention, 1957 (No. 105), which banned this form of work as a means of coercion or education; as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; or as a means of racial, social, national or religious discrimination. Some exceptions to the ban on forced labour are, however, envisaged, such as compulsory military service, normal civic obligations, work in prisons by convicted detainees – on condition that this work is carried out under state control and supervision – work or service exacted in cases of emergency (such as war, famine or natural calamities), and minor communal services performed in the direct interest of the community provided that the members of the community or their direct representatives are consulted in regard to the need for such services.

In November 2001, the ILO created a Special Action Programme to Combat Forced Labour to spearhead the Organization's activities and give them more comprehensiveness, visibility and cohesion. The programme has undertaken extensive research on the contemporary manifestations of forced labour, provided advisory services and implemented various programmes and projects. As part of the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, referred to above, the Director-General publishes every four years a Global Report on forced labour. The first of these, *Stopping forced labour*,⁵ published in 2001, showed that the phenomenon was not just a thing of the past. The second, *A global alliance against forced labour*,⁶ published in 2005, included a quantitative estimate of forced labour throughout the world and explored the links with poverty, discrimination, migration and human trafficking. It also called for a global action plan.

⁵ *ibid.*, 89th Session, Geneva, 2001.

⁶ *ibid.*, 93rd Session, Geneva, 2005.

The ban on slavery and forced labour appears in a series of international instruments, starting from the 1926 Slavery Convention (and subsequent supplementary Conventions), with which the international community established the ban on slavery for the first time in a legally binding form in the United Nations. This was followed by the 1956 Convention banning new forms of exploitation of labour,⁷ the first of which is debt bondage, and by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights.

The Universal Declaration of Human Rights covers slavery and forced labour in two separate articles. In Article 4 the Declaration provides that “(n)o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. Article 23, regarding workers’ rights, establishes that each individual has the right to “free choice of employment”, in terms not so much of an individual’s right to demand any particular job as of a ban on compulsory work or the allocation of work by the authorities.

The International Covenant on Economic, Social and Cultural Rights deals only incidentally, in Article 6.1, with slavery and forced labour, following the structure of the first paragraph of Article 23 of the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights differs from this approach, as it deals expressly and in detail with the problem of slavery and servitude in Article 8, which essentially echoes the wording of Article 4 of the Universal Declaration of Human Rights, albeit distinguishing between the two concepts. Slavery is considered as a relatively technical and limited notion, which implies the “destruction” of the juridical personality of the victim, while the concept of servitude is more general, since it covers all possible forms of domination of one person by another.

The new elements are to be found in Article 8, paragraph 3(a), which states with respect to forced labour that “no one shall be required to perform forced or compulsory labour”. Article 8.3(b) specifies that this provision does not preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court. Under the terms of Article 8.3 (c), the term “forced or compulsory labour” shall not include:

- (i) any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) any service of a military character and, in countries where conscientious

⁷ Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956.

Glossary of labour law and industrial relations

objection is recognized, any national service required by law of conscientious objectors; (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community; (iv) any work or service which forms part of normal civil obligations.

From a comparative viewpoint, the recommendations originating at the international level have been espoused both by the Council of Europe, the organization to which all the nations of Europe belong, and by the EU (for which the considerations made earlier still hold). Nevertheless, the approaches followed by the two organizations should be distinguished.

The Council of Europe was created for the specific purpose of promoting the protection of human rights. Accordingly, the organization espoused the international standards from the outset, following an approach inspired by the promotion of the fundamental rights.

Following the model of the ILO Conventions, the European Convention on human rights prohibits forced labour and slavery (Article 4, paragraphs 1 and 2), specifying however that forced and compulsory work shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention; (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; (d) any work or service which forms part of normal civic obligations (Article 4.3).

The European Court of Human Rights ruled in 1962 (Iversen/Norway ruling) that for work to be considered forced or compulsory, it needs to be performed against the will of the interested party and have an unjust or oppressive character. In later years, the Court expressed its opinion on the third paragraph of Article 4 noting that in the event of lawful detention it would seem to be legitimate to ask detainees to work, both to provide for their keep and to set aside a sum that can be used on their release to prevent them being forced to resort to crime once again.

Discrimination in employment and occupation

The ban on discrimination, a key principle of human rights, has always been the focus of close attention by the ILO. Back in 1938, the International Labour Conference invited the ILO Member States to apply the principle of equality of treatment to all workers resident in their territory, and to renounce all exceptional measures that might give rise to particular discrimination against workers of any given race or religion, with regard to their access to public or private employment. Part II(a) of the Declaration of Philadelphia (1944) states that “all human beings,

irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". It was only in the 1950s, however, with the Equal Remuneration Convention, 1951 (No. 100), and above all with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that a more complete notion of discrimination was arrived at than the one set forth in one form or another in the previous ILO provisions.

Convention No. 100 requires Member States to ensure that the principle of equal remuneration for men and women workers for work of equal value is applied to all workers through national laws or regulations, machinery for wage determination, or collective agreements. The concept of remuneration adopted here includes wages or salaries and any additional emoluments, whether in cash or in kind, made by the employer to the worker and arising out of the worker's employment. To give full effect to the Convention, the adoption of measures to promote objective appraisal of jobs on the basis of the work to be performed is envisaged.

Gender discrimination is also covered by Convention No. 111, in relation to working conditions. The introduction to the Convention refers to the Declaration of Philadelphia and the Universal Declaration of Human Rights. It defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (Article 1).

After listing the different forms of discrimination that it prohibits, the Convention adds that the notion of discrimination includes "such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies". The ban on discrimination is thus extended to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Signatory States undertake to give effect to the right to non-discrimination through measures punishing the prohibited conduct and to promote equal treatment, including with the cooperation of the social partners. Later ILO Conventions and Recommendations address other specific forms of discrimination.

The prohibition of discrimination is widely recognized in nearly all the international instruments concerning human rights. The United Nations Charter refers to the prohibition in two places. Article 1, concerning purposes and principles, commits nations to "[achieving] international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or

Glossary of labour law and industrial relations

religion”. Article 55 (c) concerns “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

This principle plays a central role in the Universal Declaration of Human Rights and underlines its central role and linkages with the other human rights. It appears in the Preamble, in Article 7 (equality before the law) and in Article 23.2 (equal pay for equal work), and in Article 2, which states that “(e)veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The two Covenants of 1966 set out the principle of non-discrimination in similar terms to the Universal Declaration, albeit adopting different formulations. Both address the subject of discrimination in general in Article 2. However, the Covenant on Economic, Social and Cultural Rights, more alert to labour issues, also sanctions the principle of equal remuneration without distinction (Article 7 (a)) and equal opportunities for workers in career advancement (Article 7 (c)), and prohibits any form of discrimination against children in employment (Article 10).

The concept of discrimination is much more specific in another three important conventions:

- (a) the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965, Article 5 of which lists the fundamental rights of each individual and specifically mentions “the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration”, as well as “the right to form and join trade unions”;
- (b) the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted in 1973, which condemns the denial to members of a racial group or groups basic human rights and freedoms, including the right to work and the right to form recognized trade unions;
- (c) The Convention on the Elimination of All Forms of Discrimination against Women, adopted in December 1979, which in Article 1 defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”; and provides in Article 11 for equality in the field of employment, with explicit reference to the right to work, and to equal employment opportunities, the free choice of profession, equal remuneration, social security, the protection of health, maternity, and support for parents in combining family obligations with work responsibilities.

Within the European Community, the institutions have been working steadily on the question of non-discrimination and have achieved good results in transposing the EU provisions, in spite of the resistance posed by a number of Member States from the points of view both of community legislation and national legislation.

The principle of pay equality for male and female workers is based directly on Article 119 (subsequently amended, cf. current Article 141 TEC; new Article III-108), clearly inspired by ILO Convention No. 100 of 1951. The explicit reference to equal remuneration, as the Court of Justice has underlined, reflects the Treaty's objectives of avoiding competition within the Community market on the basis of the underpayment of women workers. The Court of Justice has progressively linked the principle of equal remuneration to more general social policy aims such as the improvement of living and working conditions in the Member States, following the indications of the Preamble and of Article 117 of the original Treaty. These were subsequently taken up in the EU legislation in a series of directives, starting with Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and by Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

These Directives have since been followed by 20 years of intense activity by the European Court of Justice, which has reiterated the objective and subjective scope of the provisions and recognized the predominance of the above-mentioned social objectives of the Treaty. From this point of view, the principle of equal pay and that of equal treatment form a single area in which Community law and the Member States converge on the idea that economic liberalism can be combined with social progress. This emerges even more clearly if interpreted in the light of Article 3.2 TEC, which gives the Community the objective of eliminating inequalities and promoting equality between men and women, and of Article 141.3 TEC (new Article III-108), which obliges the Community to "establish measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation".

The objective of both provisions is equality between men and women (in general, in the first case; and in relation to employment and occupation, in the second). They should, however, be interpreted as meaning that the obligation to ensure equal treatment (which is expressed in Community law through Article 6 of the Treaty establishing the European Union (TEU)) may be subject to exceptions with respect to gender differences, thus making positive actions legitimate. Moreover, Article 141.4 TEC (new Article III-108) espoused positive actions by establishing that "with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for

Glossary of labour law and industrial relations

specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers”.

This new provision is reinforced by the greater receptiveness to the issue of equality that emerges in the Amsterdam and Nice Treaties, and is expressed in Article 137.1(i) TEC (new Article III-104), which entrusts the Community with the task of supporting and complementing the activities of the Member States in matters such as “equality between men and women with regard to labour market opportunities and treatment at work”. Finally, the principle of equality between men and women is also set forth in Article 23 of the EU’s Charter of Fundamental Rights (2000), which envisages that the principle of equality “shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex”.

The fundamental principles governing equality between men and women in the field of employment are set forth in a number of directives issued over the last 20 years and in rulings of the Court of Justice, as well as by the integration process itself. Of these directives, the following are particularly worthy of note: Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (subsequently amended by Directive 96/97/EC of 20 December 1996); Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in a self-employed capacity; Directive 96/34/EC of 3 June 1996 on parental leave; Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex; Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

The more open approach of the Community provisions to non-discrimination in general can be seen more clearly in the last two of these directives: Nos. 2000/43 and 2000/78. These provisions do not merely enunciate the principle of formal equality but, on the basis of the experience acquired in the field of gender equality, authorize action to penalize indirect discrimination and remove obstacles to the full implementation of the principle of non-discrimination. Article 13 of Directive 2000/43 obliges Member States to promote equality of treatment against discrimination based on race or ethnic origin and Article 7 of Directive 2000/78 envisages the possibility of positive action “to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1”, i.e. “religion or belief, disability, age or sexual orientation”. Most importantly, the Directive recognizes the right of all persons to equality before the law and protection against discrimination as a universal right (cf. Paragraph 3 of the Preamble of Directive 2000/43). It should also be noted that both

directives oblige Member States to ensure that judicial and/or administrative procedures are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended. In particular, Member States have to ensure that associations, organizations or other legal entities which have a legitimate interest in ensuring that these provisions are complied with may engage, either on behalf of or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of the obligations. This is without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment (see Article 7, Directive 2000/43, and Article 9, Directive 2000/78).

A concerted effort to eliminate child labour

The ILO Minimum Age for Admission to Employment Convention, 1976 (No. 138) commits nations to pursuing national policies designed to ensure the effective abolition of child labour. These provisions were complemented by the Worst Forms of Child Labour Convention, 1999 (No. 182). Convention No. 182 obliges nations to secure the prohibition and elimination of the worst forms of child labour, which comprise slavery and similar practices, including forced or compulsory recruitment of children for use in armed conflict, prostitution and the production of pornography, the use of children for illicit activities, and work which by its nature is likely to harm the health, safety or morals of children (Article 3). As we can see, these forms of employment were already to a large extent prohibited by Convention No. 138 on the minimum age. The significance of Convention No. 182 therefore lies primarily in the fact that it reiterates and underlines existing obligations, especially for the purpose of involving Member States which, for one reason or another, had not intended or been able to ratify Convention No. 138.

The Convention on the Rights of the Child, approved by the General Assembly of the United Nations on 20 November 1989 (and ratified by 188 countries), changed the situation in at least two ways.

First, it led to a review of the approach previously followed: a change from a competition-based approach to a rights-based approach where the drafting of legislative standards, although taking into account a number of factors, essentially focuses on creating the conditions for the recognized right to be exercised in full. Since then, the achievement of the rights established by the Convention (to rest and leisure, play, education, etc.) has been a major objective of the activity of the ILO in this area, and of every other body concerned. For example, with Resolution 2000/280 of 28 July 2000 on the rights of the child, the United Nations Economic and Social Council asked all bodies charged with the protection of human rights, and all other relevant organs and mechanisms of the United Nations system and the specialized agencies, regularly and systematically to take a child's rights perspective into account in the implementation of their

mandates, and to take into account the work of the Committee on the Rights of the Child set up by the Convention. It should, however, be observed that while the Convention provides a more complete and coherent pillar, international provisions concerning the rights of children already existed prior to its introduction and have enabled the approach followed to be progressively brought more closely into line with the criteria mentioned above. Of these provisions, particularly worthy of note are Article 10.3 of the International Covenant on Economic, Social and Cultural Rights and Article 24 of the International Covenant on Civil and Political Rights.

Second, the Convention on the Rights of the Child has made it possible to build a previously disconnected series of prescriptions into the expression of a universally recognized fundamental right. Article 32 of the Convention recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to interfere with his or her right to education, or to be harmful to his or her health or physical, mental, spiritual, moral or social development. To give effect to this right, the provision requires nations to adopt the standards established by the various relevant international conventions in three sectors in particular: the minimum age(s) for admission to employment; adequate regulation of working hours and conditions; and an adequate system of enforcement. It follows that any work performed by children in conditions worse than those established by the international conventions, in particular in the sectors under consideration, is a form of exploitation and therefore a breach of a universally recognized fundamental right. Thus, for example, with Resolution 2000/85 of 28 April 2000 on the rights of the child, the United Nations Human Rights Committee asked all States Party to the Convention to progressively and effectively eliminate the various forms of child labour that are incompatible with the international standards established by the relevant international conventions.

At the European level, the recommendations issued by international bodies have been espoused both by the Council of Europe, the organization to which all the States of the continent belong, and by the European Union. Nonetheless, the approach followed by the two organizations should be distinguished.

As far as the Council of Europe is concerned, Article 7 of the European Social Charter (in the revised version of 1996) obliges States Party to provide that:

- the minimum age of admission to employment should be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
- the minimum age of admission to employment should be 18 years for occupations regarded as dangerous or unhealthy;
- persons who are still subject to compulsory education should not be employed in such work as would deprive them of the full benefit of their education; and

- the working hours of persons under 18 years of age should be limited in accordance with the needs of their development and with their need for vocational training.

It also requires States Parties to:

- recognize the right of young workers and apprentices to a fair wage or other appropriate allowances;
- provide that the time spent by young persons in vocational training during normal working hours should be treated as forming part of the working day;
- provide that employed persons of under 18 years of age should be entitled to a minimum of four weeks' annual holiday;
- provide that persons under 18 years of age should not be employed in night work, with the exception of certain occupations;
- provide that persons under 18 years of age employed in certain occupations should be subject to regular medical control; and
- ensure special protection against physical and moral dangers to which children and young persons are exposed, especially as a direct or indirect consequence of their work.

These obligations were reinforced and specified more closely by a series of resolutions by the Committee of Ministers and by the Parliamentary Assembly, of which the Assembly's Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation, which condemns trade competition policies and industries based on the exploitation of child labour, is worthy of note. As can be seen, there is a direct link between trafficking and exploitation, given that the former is practised not just for the purposes of adoption but also for that of sexual exploitation and economic exploitation in general (domestic work, children given in debt bondage, work in inhumane conditions). The Assembly's provisions also include:

- Recommendation 874 (1979) on a European Charter on the Rights of the Child;
- Recommendation 1286 (1996) on a European Strategy for Children;
- Recommendation 1336 (1997) on combating child labour exploitation as a matter of priority; and
- Recommendation 1460 (2000) on setting up a European ombudsman for children.

Glossary of labour law and industrial relations

For the Committee, significant provisions include: Recommendation PA(63) 4 concerning the minimum age for admission to employment considered dangerous to young people or to their moral health; Recommendations PA(65) 2 and PA(65) 3; Resolution (72) 4 on the protection of young people in employment; Resolution (75) 14 on unemployment; and Recommendation R (79) 3 concerning the insertion of young people in the world of work.

It should be noted that the EU's approach differs from that of the Council of Europe. The task of the EU, as envisaged by the original Treaties, has focused more on achieving the economic integration of the Member States than on promoting the development of human rights. For a long period of its existence the respect for human rights has been perceived more as a limit that the EU is required to observe in the exercise of its competencies than an objective that it is called upon to achieve. This explains, at least in part, the somewhat uncertain course followed by this issue in the Community context.

Uncertain as to its true competence in this area, the Community began to address the question of child labour only in 1967, the year of a recommendation in which the European Commission invited Member States to respect the standards established by the Council of Europe, driven more than anything else by concern that (excessively) dissimilar protection conditions might undermine the realization of the Single Market and competition (Recommendation 67/125/EEC of 31 January 1967 on the protection of young workers).

With its Resolution of 16 June 1987 on child labour, the European Parliament rejected competition policies between Member States based on the reduction of labour costs through recourse to child labour. It also invited the Community to promote a development policy based on respect for the fundamental principles in employment matters, principles considered to be an integral part of the European cultural identity. From a not dissimilar perspective, the European Council of 9 December 1989 adopted the Community Charter of the Fundamental Social Rights of Workers, in which it reiterated that the minimum age of employment must not be lower than the minimum school-leaving age and, in any case, not lower than 15 years (Article 20).

It was only in the 1990s that the Community decided to regulate the issue with a binding provision. Like the previous provisions, Council Directive No. 94/33/EC of 22 June 1994 on the protection of young people at work was mainly intended to avoid the situation arising where the integration process, with its harmonization requirements and the need to eliminate obstacles to trade, might push individual safeguards too far downwards and, in any event, below international standards. The deadline for the implementation of Directive 94/33 was 22 June 1996. For some provisions regarding working time and night work, a four-year derogation from this deadline was introduced for the United Kingdom (Article 17.1 b). On 20 July 2000 the Commission

adopted a report in which it declared its opposition to the renewal of the derogation.⁸

Directive 94/33 sets the minimum age at not lower than the minimum age at which compulsory full-time schooling as imposed by national law ends, or 15 years in any event. It obliges employers to take the necessary measures to protect the health and safety of children, taking into account a series of factors regarding their vulnerability. It establishes a maximum working time of eight hours a day and 40 hours a week, and requires time spent on training to be counted as working time (Article 8); prohibits night work (Article 9); envisages a minimum rest period of 12 consecutive hours in each 24-hour period and of two days in each seven-day period, as well as annual rest and daily break(s) (Article 10); and obliges Member States to adopt all the necessary measures to avoid citing the Directive as valid grounds for reducing the general level of protection afforded to young people (the so-called “non-reducing clause” as referred to in Article 16).

The Directive therefore merely sets the minimum level below which children should not be employed, while at the same time setting a sort of standstill requirement for those Member States that already have higher standards. Naturally, it will not be easy in a single, competitive market to maintain such a requirement.

Conclusion: Ongoing problems in the application of fundamental rights at work

Social rights, like Janus, have two faces. They look at one and the same time to the protection offered by national laws and that put in place by collective autonomy, since the State cannot be the only interpreter of these fundamental rights. It is for this reason that the international community pays close attention to the respect of the rights most directly connected with the principle of freedom of association and the right to collective bargaining. For the affirmation of these rights, the above-mentioned ILO report *Organizing for social justice* notes that people continue to lose their lives and their freedom in attempting to organize and defend collectively their fundamental rights.

However, as the report shows, there are encouraging signs of progress in the guarantees for the fundamental rights at work. The study notes “a general positive trend, linked to the spread of democracy, high rates of ratification of the fundamental international labour standards, and increased transparency in global markets”,⁹ while the ILO is working towards the universal ratification of the

⁸ Relation of the Commission on the effects of the period of transition granted to the United Kingdom with respect to dispositions of the Council Directive 94/33/EC relating to the protection of young people at work (COM/2000/457 def.).

⁹ Report I(B), Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 88th Session, Geneva, 2000, Introduction, para. 4.

fundamental Conventions. An awareness is therefore spreading that the respect for freedom of association and the right to collective bargaining plays an important role in economic development by guaranteeing that the benefits of growth are shared, thus improving productivity and fostering social peace.

To favour the achievement of these objectives, *Organizing for social justice* proposed to the international community a sort of plan of action for the following four years. Looking ahead, the International Labour Organization faces four main challenges. First, the universal ratification of Conventions Nos. 87 and 98 must be pursued. Second, vulnerable groups face considerable difficulties in having their right to freedom of association acknowledged. Third, the ILO should examine more closely the means by which the principles and rights of freedom of association and collective bargaining can be used to build an institutional framework for the labour market that promotes suitable social and economic development, especially the reduction of poverty. Fourth, the ILO should deepen its knowledge base and thus strengthen its advisory service and advocacy activities.

As far as discrimination is concerned, the ILO has reported that there is an urgent need to establish an international framework for equal treatment in employment and occupation with a view to ensuring equal treatment of individuals in all Member States. In particular, national and regional legislations should focus on very specific areas of competence such as conditions of access to employed or self-employed activities (including promotional activities), vocational training, and employment and working conditions (including pay and dismissals). In this regard, legislation should be aimed at combating both direct discrimination (differential treatment based on a specific characteristic) and indirect discrimination (any provision, criterion or practice that is neutral on the face of it but is liable to adversely affect one or more specific individuals or incite discrimination). ILO Member States should maintain and adopt measures intended to prevent or compensate for existing inequalities (for example, measures to promote the integration of young people, the transition from work to retirement, and so on). In this context, the social partners have a crucial role to play in combating discrimination, and in so doing they should enjoy adequate measures to promote social dialogue between the two sides of industry with a view to fostering the principle of equal treatment through the monitoring of workplace practices, codes of conduct, exchange of experiences and good practices.

With regard to child labour, we have noted above that this is both a serious problem in its own right and a major factor limiting school enrolment, retention and educational achievement. Indeed, the poverty of parents today condemns working children to poverty tomorrow. Action to increase schooling and skills needs to go hand in hand with action to reduce child labour. The growing national consciousness of the issue is leading many countries to adopt strategies

for the elimination of the worst forms of child labour. In this regard, the World Commission on the Social Dimension of Globalization, in its report of 2004,¹⁰ highlighted the fact that all relevant institutions should assume their part in promoting the core international labour standards and the Declaration on Fundamental Principles and Rights at Work; and where the failure to realize these fundamental principles and rights at work is due to a lack of capacity rather than a lack of political will, existing technical programmes for the implementation of standards should be stepped up, including the strengthening of labour administrations, training, and assistance to the organizations of workers and employers. This should include reinforcement of existing action to eliminate child and forced labour. Moreover, the ILO should improve the supervision and monitoring of the implementation of the Declaration on Fundamental Principles and Rights at Work and other procedures in the ILO Constitution. For example, where persistent violations of rights continue despite recommendations of the ILO's supervisory mechanisms, enforcement of these labour standards may be pursued through Article 33 of the ILO Constitution, which in the event of non-compliance with a ratified Convention authorizes the ILO constituents to take action to secure compliance in each country concerned.

These measures and issues are explained in this *Glossary*, which also contains details of the procedures dealing with the different legislative aspects at the international level. Given that the *Glossary* will need to evolve to reflect changes at the international, regional and national level, we hope that it will be updated in the coming years. The present *Glossary*, therefore, seeks to address the principles and rights at work in a systematic and concentrated manner with a view to contributing to a better understanding of fundamental rights at work as a foundation for democratic development in an interdependent world.

¹⁰ ILO: *A fair globalization: Creating opportunities for all*, report of the World Commission on the Social Dimension of Globalization (Geneva, 2004).

A

Ability to pay/capacity to pay

One of several criteria used to determine wage increases and reflecting the financial capacity of an enterprise, an industry or the economy as a whole to sustain such increases. The capacity to pay can be influenced by a range of factors, including profitability, productivity, growth and the competitive situation.

See **Equitable wages; Wages policy.**

Abolition of forced labour

ILO Convention No. 29 (1930) concerns the suppression of forced labour. The fundamental commitment made by Member States ratifying the Convention is to suppress the use of forced or compulsory labour in all its forms in the shortest possible time. A general definition of forced or compulsory labour is given, but the Convention does not apply to five categories of work or compulsory service, subject to certain conditions and guarantees. The five categories are: compulsory military service; certain civic obligations; prison labour; work exacted in cases of emergency; and minor communal services. The illegal exaction of forced or compulsory labour shall be punishable as a penal offence.

ILO Convention No. 105 (1957) aims to prohibit the recourse to forced or compulsory labour in any form for certain purposes. Under this Convention, Member States undertake to suppress any form of forced or compulsory labour in five defined cases, namely:

- as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- as a method of mobilizing and using labour for purposes of economic development;
- as a means of labour discipline;
- as a punishment for having participated in strikes;
- as a means of racial, social, national or religious discrimination.

See **Child labour; Trafficking.**

Accession criteria

In June 1993, the Copenhagen European Council recognized the right of the countries of Central and Eastern Europe to join the European Union (EU) when they had fulfilled three criteria:

- political: stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities;
- economic: a functioning market economy;
- incorporation of the body of Community laws (*acquis*): adherence to the various political, economic and monetary aims of the EU.

These accession criteria were confirmed in December 1995 by the Madrid European Council, which also stressed the importance of adapting the applicant countries' administrative structures to create the conditions for a gradual, harmonious integration. However, the EU reserved the right to decide when it would be ready to accept new members.

See *Acquis communautaire*.

Accession negotiations of the European Union

The applications of ten Central and Eastern European countries were given a favourable reception at the Luxembourg European Council (December 1997). The official accession negotiations then proceeded in two phases. In March 1998, negotiations began with six "first-wave" candidate countries (Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia). The "second-wave" candidate countries (Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia) began negotiations in February 2000, when it was felt that their reforms had made rapid enough progress. Before negotiations opened, an evaluation of each applicant country's legislation was carried out to set up a work programme and define negotiating positions.

The accession negotiations examine the applicants' capacity to fulfil the requirements of a Member State and to apply the body of Community laws (the *acquis*) at the time of their accession, in particular the measures required to extend the single European market, which will have to be implemented immediately. The negotiations also look at the issue of the pre-accession aid that the European Union (EU) may provide in order to help with the incorporation of the *acquis*. The negotiations can be concluded even if the *acquis* has not been fully transposed, as transitional arrangements can be applied after accession. The negotiations proper take the form of bilateral Intergovernmental Conferences (EU/applicant country), bringing the ministers together every six months and the ambassadors every month. The common negotiating positions have been defined by the European Commission for each of the chapters relating to matters of Community competence and approved unanimously by the Council. The

results of the negotiations are incorporated in a draft accession treaty. This must be approved by the Union and ratified by the Member States and the applicant countries. At the Copenhagen European Council (12- 13 December 2002), the Commission concluded the negotiations with ten applicant countries: the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, thus enabling them to join the Union on 1 May 2004. As far as Bulgaria and Romania are concerned, the goal is to conclude negotiations in time for them to join in 2007. Accession negotiations with Turkey will begin in October 2005.

See **Enlargement and social policy; Enlargement of the European Union; Intergovernmental Conference (IGC).**

Accession of new Member States to the European Union

Accession of new Member States to the European Union is provided for in Article 49 of the Treaty on European Union (EU Treaty), 1992. The Council must agree unanimously to open negotiations, after consulting the European Commission and receiving the assent of the European Parliament. The conditions of admission, any transition periods and adjustments to the Treaties on which the Union is founded must be the subject of an agreement between the applicant country and the Member State. To enter into force, the agreement requires ratification by all the contracting States in accordance with their respective constitutional requirements.

See **Accession negotiations of the European Union; Enlargement of the European Union.**

ACP-EC Partnership Agreement

A framework for trade and economic cooperation between the African, Caribbean and Pacific (ACP) States (except Cuba) and the European Community, which entered into force on 1 March 2000 for 20 years as the successor to the Lomé Convention. It is based on five pillars: a comprehensive political dimension; participatory approaches to ensure the involvement of civil society in beneficiary countries; a strengthened focus on poverty reduction; a framework for economic and trade cooperation; and a reform of financial cooperation. The Agreement has several review mechanisms. Its trade aspects will be renegotiated after eight years to make them fully compatible with World Trade Organization (WTO) obligations. During this time (called the preparatory period), the European Community will give non-reciprocal preferential access free of duty and charges to products from ACP States. The Agreement entails wide-ranging cooperation in trade-related areas including, among others, trade in services, competition policy, trade and environment and trade and labour standards.

See **ACP States.**

ACP States

The African, Caribbean and Pacific States associated with the European Community through the ACP-EC Partnership Agreement which gives them preferential access to the European Community markets and other benefits. The group of ACP States was established on 6 June 1975 through the Georgetown Agreement. It now operates under a revision of the Agreement agreed in November 1992. Its General Secretariat is located in Brussels.

Acquis communautaire

This refers to the body of common rights and obligations that bind all Member States within the European Union (EU). It is based principally on the Treaties of Rome, Maastricht and Amsterdam and the instruments that supplement them, as well as a wide range of secondary legislation enacted under these Treaties. It is constantly evolving and comprises:

- the content, principles and political objectives of the treaties;
- the legislation adopted in the application of the treaties and the case law of the European Court of Justice;
- the declarations and resolutions adopted by the EU;
- measures relating to the common foreign and security policy;
- measures relating to justice and home affairs;
- international agreements concluded by the Community and those concluded by the Member States between themselves in the field of the EU's activities.

Thus the Community *acquis* comprises not only Community law in the strict sense, but also all Acts adopted under the second and third pillars of the EU and, above all, the common objectives laid down in the Treaties.

Applicant countries have to accept the Community *acquis* before they can join the EU. Exemptions and derogations from the *acquis* are granted only in exceptional circumstances and are limited in scope. The EU has committed itself to maintaining the Community *acquis* in its entirety and developing it further. There is no question of going back on its contents. In preparation for the accession of new Member States, the Commission examined with the applicant countries how far their legislation conformed to the Community *acquis*.

See Treaties.

ADAPT

Abbreviation for Adaptation of the Workforce to Industrial Change, a European Union (EU) programme established in 1994, which continued as ADAPT Bis (Building the Information Society) after 1996. The ADAPT initiative aims to

adapt workers to the evolution of labour markets, increase the competitiveness of European enterprises through better training, prevent unemployment by increasing professional qualifications, and create new jobs and new activities. The initiative gives special attention to less-developed regions. The actions supported by ADAPT are training, consulting and orientation; actions of anticipation, networking and the promotion of new possibilities; adapting structures and systems; and the dissemination of information. In order to be eligible for financing under the framework of ADAPT, actions must meet the following criteria: they must enhance the innovative character of the enterprise; have a transnational dimension; advance transparency and the effectiveness of training systems and structures; and have an active approach.

Adjudication *see* **Arbitration.**

Adolescent

Any young person of at least 15 years of age but under 18 years of age, who is no longer subject to compulsory full-time schooling under national law.

See **Youth; Youth employment.**

Advisory Committee on Equal Opportunities

Advice provided by the Committee helps the European Commission to formulate and implement Community measures aimed at promoting equal opportunities for women and men. It also encourages the continuous exchange of information on experience gained, and policies and measures undertaken in the fields in question between the European Union Member States and the various actors involved. The Committee has 40 members with a three-year, renewable term of office. It is composed of one representative from each Member State appointed by the respective government from among the officials of ministries or government departments responsible at national level for promoting equal opportunities, one representative from each Member State appointed by the Commission from among the members of national committees or bodies specifically responsible for women's employment and/or equal opportunities, five members representing employers' organizations at Community level, and five members representing employees' organizations at Community level appointed by the Commission on the basis of a proposal from the social partners. Two representatives of the European Women's Lobby will attend committee meetings as observers; representatives of international, professional and membership organizations may also be admitted as observers following a reasoned request. The Committee will elect a Chairperson and two Vice-Chairpersons from among its members for a period of one year. The Chairperson may invite any person who is specially qualified in a particular subject on the agenda to take part in the work of the Committee as an expert.

Glossary of labour law and industrial relations

The Committee will be convened by the Commission and will meet at least twice a year at the Commission's headquarters. Representatives of the Commission will be entitled to take part in meetings of the Committee and its working parties. The Committee's deliberations are based on requests for opinions made by the Commission and on opinions delivered on its own initiative. They are not followed by a vote. (See Commission Decision 82/43/EEC of 9 December 1981 relating to the setting up of an Advisory Committee on Equal Opportunities for Women and Men; amended by Commission Decision 95/420/EC of 19 July 1995.)

See **Equal opportunities**; *other entries under* **"Equal"** and **"Equality"**.

Advisory Committee on Safety, Hygiene and Health Protection at Work *see* **Safety, hygiene and health protection at work – SAFE programme.**

Affirmative action *see* **Positive action.**

Age

European Union citizenship confers the right to protection from discrimination on the grounds of, among other things, age. This is enshrined in the Charter of Fundamental Rights of the European Union.

See **Charter of Fundamental Rights of the European Union; Citizenship of the European Union; Fundamental rights; Health, hygiene and safety at work.**

Agenda 2000

This action programme was adopted by the European Commission on 15 July 1997 as an official response to requests made by the Madrid European Council in December 1995 that it present a general document on enlargement and the reform of the common policies, and a communication on the European Union's future financial framework after 31 December 1999. Agenda 2000 tackled all the questions facing the Union at the beginning of the twenty-first century. Attached to it are the Commission's opinions on the countries that applied for Union membership:

- The first addressed the question of the Union's internal operation, particularly the reform of the common agricultural policy and of the policy of economic and social cohesion. It also contained proposals for a new financial framework to be put in place for the period 2000–06.
- The second proposed a reinforced pre-accession strategy, incorporating two new elements: the partnership for accession and extended participation of the applicant countries in Community programmes and the mechanisms for applying the Community *acquis*.

- The third consisted of a study on the impact of the effects of enlargement on European Union policies.

These priorities were fleshed out in some 20 legislative proposals put forward by the European Commission in 1998. The Berlin European Council reached an overall political agreement on the legislative package in 1999 with the result that the measures were adopted the same year. They covered four closely linked areas for the period 2000-06:

- reform of the common agricultural policy
- reform of the structural policy
- pre-accession instruments
- financial framework.

See **Enlargement of the European Union.**

Agreement

A mutual understanding, usually in writing, between employers, workers and/or their representatives resulting from a negotiation process. The scope as well as the coverage of an agreement will depend on the parties and the subject matter. An agreement usually concerns the terms and conditions of employment (applicable for a fixed period of time) or the basis for addressing an issue. An agreement can vary in terms of formality, and may or may not be legally binding. It usually has to be registered before coming into legal effect.

See also **Collective bargaining.**

Amsterdam Treaty *see* **Treaties.**

Arbitration

A method of dispute settlement in which an independent third party (usually a tribunal) considers the arguments of both sides and then takes a decision binding on the parties in the dispute. Arbitration can be:

- compulsory: compulsory dispute settlements – by a third party – required by law;
- obligatory: arbitration which results from the voluntary agreement of parties under a collective agreement to submit further disputes related to the agreement to a third party for settlement;
- voluntary: a mutual request by labour and management that an issue on which they do not agree be submitted to arbitration.

Glossary of labour law and industrial relations

Adjudication is basically also a form of arbitration in that there is a neutral third party who takes a binding decision, the difference being mostly in the enforcement of the decision. In most countries, if one of the parties does not follow the arbitration award (this is the outcome of the arbitration process, the decision taken by the arbitrator), the other party will have to go to court to have the decision enforced. Although the decision taken by an arbitrator is binding, this does not mean that a party cannot appeal. This appeal will be handled through adjudication. Another distinction made in many countries is that adjudication handles rights disputes while arbitration, in the strict sense of the word, focuses on interests disputes.

Asbestos

ILO Convention No. 162 (1986) aims to prevent occupational hazards due to asbestos. This Convention applies to all activities involving the exposure of workers to asbestos in the course of work.. National laws or regulations shall prescribe the measures to be taken for the prevention and control of, and the protection of workers against, health hazards due to occupational exposure to asbestos. The employer is responsible for compliance, and enforcement is ensured by inspection. Exclusions, exemptions and revisions are regulated by the Convention. The Convention enumerates various detailed measures for protection and prevention, as well as for the monitoring of both the workplace and of the workers' health.

See **Health and safety at work; Occupational health services; Occupational safety and health.**

Assent procedure

The assent procedure was introduced by the Single European Act. It requires the Council to obtain the European Parliament's assent before certain important decisions are taken. The Parliament may accept or reject a proposal but cannot amend it. If the Parliament does not give its assent, the Act in question cannot be adopted. The assent procedure applies mainly to the accession of new European Union Member States (Article 49, TEC; new Article III-29), association agreements and other fundamental agreements with third countries (Article 300, TEC; new Article III-207), and the appointment of the President of the Commission. It is also required with regard to citizenship issues, the specific tasks of the European Central Bank (ECB), amendments to the Statutes of the European System of Central Banks (ESBC) and the ECB, the Structural and Cohesion Funds, and the uniform procedure for elections to the European Parliament.

Since entry into force of the Treaty of Amsterdam in 1999, the Parliament's assent has also been required for sanctions imposed on a Member State for a serious and persistent breach of fundamental rights under the new Article III7,

TEC. The Treaty of Nice has made the Parliament's assent mandatory where reinforced cooperation between certain Member States is envisaged in an area which is subject to the codecision procedure. The European Convention, established by the Laeken Declaration in December 2001, has been asked to propose simplifications to the procedures for the adoption of the various types of Community Act and is therefore considering the future use of the assent procedure.

See **Laeken Declaration; Single European Act; Treaties.**

Assisting spouses

This refers to the spouses of people who are engaged in work usually of a self-employed or independent nature, whereby the spouse is an important contributor to the work but does not necessarily receive direct remuneration for the work and is often not entitled to social protection benefits.

Atypical work/employment

According to European legislation, atypical employment covers work other than full-time and permanent work, including part-time, evening and weekend work, fixed-term work, temporary or subcontract home-based work, telework and outwork. (See Directive No. 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; and Directive No. 97/81/EC of 15 December 1997 relating to the framework agreement on part-time work concluded between the European Centre of Enterprises with Public Participation (CEEP), the European Trade Union Confederation (ETUC) and the Union of Industrial and Employers' Confederations of Europe (UNICE)). After the latter agreement, on 18 March 1999, the ETUC, UNICE and CEEP signed a framework agreement on fixed-term employment.

See **Part-time work (EU); Part-time work (ILO); Working time (ILO); Working time (organization of).**

B

Balanced participation of women and men

The sharing of power and decision-making positions between men and women in every sphere of life (40 to 60 per cent representation of either sex), which constitutes an important condition for equality between men and women. (*See* Council Recommendation 96/694/EC of 2 December 1996.)

See **Gender; Gender analysis; Gender audit; Gender equality; Gender equity; Gender gap.**

Bargaining unit

The particular unit – usually a trade union – representing worker interests that is recognized for bargaining purposes. Where no designation or certification is made in accordance with legislation, it is the unit that is accepted by the employer for bargaining purposes. Where more than one union exists in an enterprise, they may cooperate to form a single bargaining unit.

See **Collective bargaining.**

Belief

European Union citizenship covers the right to protection from discrimination on the grounds of, among other things, belief. This is enshrined in the Charter of Fundamental Rights.

See **Charter of Fundamental Rights of the European Union.**

Benzene

ILO Convention No. 136 (1971) aims to protect against the hazards of poisoning arising from benzene. The Convention applies to all activities involving the exposure of workers to benzene and to products whose benzene content exceeds 1 per cent by volume. It provides that, whenever harmless or less harmful substitute products are available, they shall be used instead of benzene, with certain exceptions. The use of benzene and products containing benzene shall be prohibited in certain work processes. If this is not the case, occupational hygiene and technical measures, and adequate monitoring shall be implemented to ensure the effective protection of workers exposed to benzene, especially to prevent the escape of benzene vapour into the air of places of employment. The Convention specifies certain of these measures. Pregnant women, nursing mothers and young persons under 18 years of age

shall not be employed in work processes involving exposure to benzene or products containing benzene.

Bipartism

Any process by which direct cooperative arrangements between employers and workers (or their organizations) are established, encouraged or endorsed. It also refers to relations between two parties, usually an employer (or its representative organization) and a trade union.

Burden of proof in cases of discrimination based on sex

European Union Directive 97/80 EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex aims to ensure that the measures taken by European Union (EU) Member States to enable persons who consider themselves wronged by failure to apply to them the principle of equality to pursue their claims by judicial process, after possible recourse to other competent authorities, are made more effective. The principle of equal treatment means the absence of any discrimination based on sex, either directly or indirectly. Indirect discrimination exists where an apparently neutral provision, criterion or practice disproportionately disadvantages the members of one sex, unless the aim pursued by the application of this provision, criterion or practice is objectively justified and the means of achieving it are appropriate and necessary.

The Directive applies to:

- the situations covered by Article 141, TEC (new Article III-108), and by Directives 75/117/EEC (principle of equal pay), 76/207/EC (access to employment, vocational training and promotion) and, insofar as discrimination based on sex is concerned, 92/85/EEC (protection of pregnant workers and those who have recently given birth or who are breastfeeding) and 96/34/EC (parental leave);
- any civil or administrative procedure concerning the public or private sector, with the exception of out-of-court procedures.

The Directive does not apply to criminal procedures, unless otherwise provided for by the EU Member States. Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that, where the plaintiff establishes, before a court or other competent authority, facts from which discrimination may be presumed to exist, it is for the defendant to prove that there has been no contravention of the principle of equality. Member States are not prevented from introducing evidential rules which are more favourable to the plaintiff. Measures taken by the Member States pursuant to the Directive, together with the provisions already in force, must be brought to the

Glossary of labour law and industrial relations

attention of all persons concerned. Implementation of the provisions of the Directive does not in any circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the area to which it applies.

See **Discrimination; Discrimination (employment and occupation); Sex discrimination, direct; Sex discrimination, indirect; Sex/gender system; Sexual harassment; Sexual violence.**

C

CEDEFOP *see* **European Centre for the Development of Vocational Training.**

CEEP *see* **European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest.**

Central management

This refers to the management of a European Community-scale undertaking, or in the case of a Community-scale group of undertakings, of the controlling undertaking.

See **European Works Council.**

Charter of Economic Rights and Duties of States

An initiative launched at the United Nations Conference on Trade and Development (UNCTAD) III (1972) ostensibly aimed at protecting the economic rights of all countries, but really promoting a change in what was seen as the entrenched lower status of developing countries in the international economic system. The draft Charter, originally intended to be binding on signatories and to become part of international law, was adopted by the United Nations General Assembly as Resolution 3281 (XXIX) on 12 December 1974.

The Charter has 34 articles grouped in four chapters. Chapters I and II set out principles that should govern the fundamentals of international economic relations among States. These include:

- mutual and equitable benefit;
- peaceful coexistence;
- equal rights and self-determination of peoples;
- peaceful settlement of disputes;
- respect for human rights and fundamental freedoms;
- promotion of international social justice;
- international cooperation for development;

Glossary of labour law and industrial relations

- the right to choose economic, political, social and cultural systems in accordance with the will of the people;
- responsibility of the State to promote the economic, social and cultural development of its people;
- cooperation in achieving a more rational and equitable system of international economic relations;
- responsibility to cooperate in the economic, social, cultural, scientific and technological fields;
- cooperation to improve the efficiency of international organizations;
- the right to participate in subregional, regional and inter-regional cooperation in the pursuit of development;
- the right and duty to eliminate colonialism, racial discrimination, neo-colonialism and all forms of foreign aggression;
- the duty to cooperate internationally for development;
- developing countries to strengthen their economic cooperation and expand their mutual trade to accelerate their economic and social development;
- the duty to coexist in tolerance and live together in peace.

Chapter III details in two sections the common responsibilities of States towards the international community, i.e. towards each other. Considerable debate developed over the legal standing of the Charter, but it slowly faded away as an international issue in any case. Some are of the view that although the Charter failed to bring about the intended changes in international economic relations, the controversy over it ensured that the concerns of developing countries would be given more attention in future.

Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights (CFR) of the European Union was proclaimed by the Presidents of the European Commission, the Council of the European Union and the European Parliament (EP) at the Nice Summit of the European Council in December 2000. It should not be confused with either the European Convention on Human Rights (ECHR), adopted by the Council of Europe in 1950, or the Charter of Fundamental Social Rights of Workers, otherwise known as the Social Charter, adopted in 1989. These two documents did, however, inspire some of the content of the CFR. Its existence owes much to the increased awareness of fundamental rights within the European Union (EU) and the desire of the EU to promote such rights, whether internally

through, for example, citizenship, or externally through the common foreign and security policy. These rights are divided into six sections:

- *dignity*: human dignity, the right to life; the right to the integrity of the person; prohibition of torture and inhuman or degrading treatment or punishment; prohibition of slavery and forced labour;
- *freedoms*: right to liberty and security; respect for private and family life; right to marry and right to start a family; freedom of thought, conscience and religion; freedom of expression and information; freedom of assembly and of association; freedom of the arts and sciences; right to education; freedom to choose an occupation and right to engage in work; freedom to conduct a business; right to property; right to asylum; protection in the event of removal; expulsion or extradition;
- *equality*: equality before the law; non-discrimination; cultural, religious and linguistic diversity; equality between men and women; the rights of the child; the rights of the elderly; integration of persons with disabilities;
- *solidarity*: workers' rights to information and consultation within the undertaking; right to collective bargaining and action; right to access to placement services; protection in the event of unjustified dismissal; fair and just working conditions; prohibition of child labour and protection of young people at work, family and professional life; social security and social assistance; health care; access to services of general interest; environmental protection; consumer protection;
- *citizens' rights*: right to vote and to stand as a candidate at elections to the European Parliament; right to vote and to stand as a candidate at municipal elections; right to good administration; right to access documents; right to access the Ombudsman; right to petition; freedom of movement and residence; diplomatic and consular protection;
- *justice*: right to an effective remedy and to a fair trial; presumption of innocence and right of defence; principles of legality and proportionality of criminal offences and penalties; right not to be tried or punished twice in criminal proceedings for the same criminal offence.

The provisions of this Charter are addressed to the institutions and bodies of the EU with due regard for the principle of subsidiarity and to the Member States only when they are implementing EU law.

The issue of the Charter's legal status – i.e. whether to make it legally binding by incorporating it into the EU Treaty – was raised by the Cologne European Council 1999, which originally launched the Charter initiative. The Convention drew up the draft Charter with a view to its possible incorporation, and the

European Parliament voted in favour of incorporation. The Nice European Council 2000 decided to consider the question of the Charter's legal status during the general debate on the future of the EU, which was initiated on 1 January 2001. However, the Court of Justice of the European Union stated that it wished to use the Charter as a guide when making its judgements. The Laeken European Council 2001 gave the European Convention a mandate to look into the question of incorporating the Charter into the existing treaties. The Charter is now incorporated into the Treaty establishing a Constitution for Europe (2004). By ratification of the Treaty, the Charter also applies to EU Member States.

See **Charter of Fundamental Social Rights of Workers; Community Charter of the Fundamental Social Rights of Workers (Social Charter); Court of Justice of the European Union; European Constitution; European Convention on Human Rights; Laeken Declaration; Treaties.**

Charter of Fundamental Social Rights of Workers

This is the official title of the original European document that later became known as the Social Charter. It originated in the review of progress towards the target of completing the internal market by the end of 1992 in which the European Council referred to the equal importance of developing the social aspects of the single market. The European Commission then drew up a set of proposals for the introduction of a European Community Charter of Fundamental Rights of Workers (Social Charter). A modified version of these proposals was then approved by the European Council at its Strasbourg Summit, in December 1989, although opposition by the United Kingdom meant that only 11 of the 12 Member States signed the document. Subsequently, the Social Charter figured prominently in the discussions leading up to the Treaty on European Union, but persistent opposition from the United Kingdom prevented it from being included in the Treaty. Instead a Social Chapter complete with an opt-out arrangement for the United Kingdom was agreed, allowing the 11 to proceed with measures, notably on health and safety and worker consultation, to implement the Charter. The Labour Government elected to power in May 1997 agreed to sign the Charter shortly after taking office. Following this, the Treaty of Amsterdam removed the opt-out clause and incorporated the Social Chapter in the revised Treaty of Rome.

Essentially, the Charter set out to codify in general terms what the European Community (EC) had already begun to do in the social sector, as well as introducing some new proposals. In emphasizing that the single internal market must benefit workers as well as employers, the Charter set out a code of practice that dealt with living and working conditions, freedom of movement of labour, collective bargaining, training, equal opportunities, gender equality, measures to protect underprivileged groups, and safety and health protection. Much of this

was already the subject of EC directives and regulations. The European Commission wanted a further harmonization of practices that would bring them to the level of the best national practices currently in existence, and stressed the appropriateness of EC action where the desired goals could be more easily achieved within the EC, rather than at the national level. Since the Charter's adoption, many of the rights of workers contained in it have been incorporated into the Charter of Fundamental Rights proclaimed in 2000.

See **Charter of Fundamental Rights of the European Union; Community Charter of the Fundamental Social Rights of Workers (Social Charter).**

Child

Any young person under 15 years of age, or who is still subject to compulsory full-time schooling under national law.

See **Health and safety at work.**

Child labour

Today, throughout the world, nearly 250 million children work, many fulltime. They do not go to school and have little or no time to play. Many do not receive proper nutrition or care. Tens of millions of these children are victims of the worst forms of child labour:

- work in hazardous environments, where they are exposed to toxic chemicals, dangerous machinery, or extreme heat;
- use in illicit activities such as drug trafficking, prostitution, or the production of pornography;
- trafficking or being forced into slavery or slave-like conditions;
- being forced to take part in armed conflicts.

In this first decade of a new century, combating child labour must be among humanity's highest priorities. There is a solid foundation for action to build upon, from experiences accumulated by a growing number of countries in the 1990s. During that decade, the world awoke to child labour, primarily because of rising public support for children's rights, and an expanding concern about fair labour standards and decent work for adults in the global economy. Just a decade ago, research on the causes and effects of child labour was thin. Field project work on child labour was hard to find, and the reform of national policies and laws on child labour was proceeding slowly. Many countries with serious child labour problems were denying its very existence. Since then, there has been a sea change in attitudes towards child labour, especially its worst forms. This has been most evident in the outpouring of international political support for the eradication of abusive child labour, best demonstrated by the

Glossary of labour law and industrial relations

rate of ratification of the ILO's Convention No. 182 (1999), which calls for immediate action to eliminate the worst forms of child labour. More than 130 countries, a clear majority of ILO Member States, have ratified the ILO Convention, by far the fastest pace of ratification in the history of the ILO. The growing support for the Minimum Age Convention, 1973 (No. 138), now ratified by more than 120 countries, provides further confirmation of increased worldwide awareness of the child labour issue. Together, the ratifications of these Conventions are clear and quantifiable indicators of the rapidly expanding global will to place child labour high on the international action agenda.

The ILO has a strong technical cooperation programme (International Programme on the Elimination of Child Labour – IPEC) to back up the Member States' political will. The aim is the elimination of child labour worldwide, emphasizing the eradication of the worst forms as rapidly as possible. It works to achieve this in several ways: through country-based programmes which promote policy reform and put in place concrete measures to end child labour; and through international and national campaigning intended to change social attitudes and promote ratification and effective implementation of ILO child labour Conventions. Complementing these efforts are in-depth research, legal expertise, data analysis, policy analysis and programme evaluation carried out at different levels.

See **Abolition of forced labour; Minimum age; Trafficking; Worst forms of child labour.**

Childcare

A broadly based concept covering the provision of public, private, individual or collective services to meet the needs of children and parents. (See European Council Recommendation 92/241 of 31 March 1992; European Directive 96/34/EC of 3 June 1996.)

See **Workers with family responsibilities.**

Citizens' rights

In the European Union, these are determined and guaranteed by the provisions of the Treaty of Rome and those of the European treaties. However, the treaties only deal with rights in terms of general principles and in specific, mainly economic, areas. A second source of citizens' rights, again only in specific areas, has been the rulings of the European Court of Justice in the context of its interpretation of the treaties. These cases have been concerned primarily with the principle of equality between citizens within one Member State, especially for minority groups.

In the 1980s the European Communities (EC) began to emphasize citizens' rights as part of its promotion of awareness of, and loyalty to, the EC at the level of the individual. This was one of the objectives of the 1984 Committee for a

Peoples' Europe, but implementation of its proposals was slow. The Treaty on European Union attempted to expand the rights already enjoyed by individuals into a broader notion of citizenship. The Treaty of Amsterdam, which entered into force in 1999, continued to build on this idea, and focused further attention on the citizen's rights. The Treaty permits the Council of the European Union to take action, by unanimity, in cases of discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation. EC Member States signing the Treaty also agreed to eliminate inequalities between men and women; to protect citizens against misuse of data held by EC institutions; and to maintain and establish cooperation in areas of public health, the environment and sustainability, and development and consumer protection. The Treaty of Amsterdam, moreover, incorporated the protocol on social policy (see **Charter of Fundamental Social Rights of Workers**) into the revised Treaty of Rome. At Nice, in December 2000, the rights of citizens were once again on the agenda with the proclamation of the Charter of Fundamental Rights, which contains a section dedicated to citizens' rights.

Citizenship of the European Union

This is dependent upon holding the nationality of one of the European Union (EU) Member States. In other words, anyone who is a national of a Member State is considered to be an EU citizen. In addition to the rights and duties laid down in the Treaty establishing the European Community, EU citizenship confers four special rights:

- freedom to move and take up residence anywhere in the Union;
- the right to vote and stand in local government and European Parliament elections in the country of residence;
- diplomatic and consular protection from the authorities of any Member State where the country of which a person is a national is not represented in a non-EU country; and
- the right to petition and appeal to the European Ombudsman.

The introduction of the notion of Union citizenship does not, of course, replace national citizenship: it is in addition to it. This gives the ordinary citizen a deeper and more tangible sense of belonging to the EU. The Treaty of Amsterdam, moreover, incorporated the protocol on social policy into the revised Treaty of Rome. In Nice, in December 2000, the rights of citizens were once again on the agenda with the proclamation of the Charter of Fundamental Rights, which contains a section dedicated to citizens' rights.

See **Charter of Fundamental Rights of the European Union; European Convention; Treaties.**

Closer cooperation in the European Union

To encourage closer cooperation between European Union (EU) countries which wish to go further than the degree of integration provided for by the Treaties (in the fields of social affairs, elimination of border controls, etc.), various instruments have been introduced, such as the Social Policy Agreement and the Schengen Accords. This has allowed Member States who so wish to make progress at a different pace or on different objectives outside the institutional framework of the EU.

After the Treaty of Amsterdam came into force in 1999, the use of these instruments was put on a more formal footing with the introduction of the concept of “closer cooperation” in the Treaty on European Union (EU Treaty) and the Treaty establishing the European Community (EC Treaty). The aim of such cooperation is to enable a limited number of Member States that are willing and able to advance further to deepen European integration within the single institutional framework of the EU. Closer cooperation must meet a number of conditions. In particular, it must:

- cover an area that does not fall within the exclusive competence of the Community;
- be aimed at furthering the objectives of the EU;
- respect the principles of the Treaties and the Community *acquis*;
- be used only as a last resort;
- involve a minimum number of Member States;
- allow the gradual integration of other Member States.

Closer cooperation under the EC Treaty is authorized by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. The object of closer cooperation under the EU Treaty, according to the provisions of the Treaty of Amsterdam, is to develop the area of freedom, security and justice. At the request of the Member States concerned, this is authorized by the Council, acting by a qualified majority after both obtaining the European Commission’s opinion and following submission of the request to the European Parliament. According to the Treaty of Amsterdam, a Member State can always refuse to allow closer cooperation in a particular area for reasons of national political importance. However, a qualified majority in the Council can refer the matter to the European Council, which must act unanimously. The Treaty of Nice aimed, in particular, to simplify the use of closer cooperation and introduced significant changes:

- the minimum number of Member States required for closer cooperation has been cut by a half (Treaty of Amsterdam) to eight, irrespective of the total number of Member States;

- Member States can no longer prevent closer cooperation. The matter may be referred to the European Council, but it is the Council of Ministers that decides by the majority provided for in the Treaties;
- under the EC Treaty, Parliament's assent is required if closer cooperation covers a field subject to codecision;
- an additional condition for the implementation of closer cooperation has been added: it must not jeopardize the internal market or economic and social cohesion.

The Treaty of Nice introduced the possibility of closer cooperation in the field of the common foreign and security policy, except for matters having military or defence implications. At procedural level, decisions are taken by the Council, after an opinion from the Commission, acting by qualified majority on the basis of a common strategy.

See Social Policy Agreement; Treaties.

Codecision procedure

The codecision procedure (Article 251, TEC; new Article III-302) was introduced by the Treaty of Maastricht (1992). It gives the European Parliament the power to adopt instruments jointly with Council. The procedure comprises one, two or three readings. It has the effect of increasing contacts between the Parliament and the Council, the co-legislators, and with the European Commission. In practice, it has strengthened the Parliament's legislative powers in the following fields: free movement of workers; right of establishment; services; the internal market; education (incentive measures); health (incentive measures); consumer policy; trans-European networks (guidelines); environment (general action programme); culture (incentive measures); and research (framework programme). The Treaty of Amsterdam (1997) has simplified the codecision procedure, making it quicker and more effective and strengthening the role of the Parliament. In addition, it has been extended to include new areas such as social exclusion, public health and the fight against fraud affecting the European Community's financial interests.

Increasing the democratic nature of Community action requires the Parliament to participate in exercising legislative power. Thus, any legislative instrument adopted by qualified majority is likely to fall within the scope of the codecision procedure. In most cases, therefore, codecision in the Parliament goes hand in hand with qualified majority voting in the Council. For some provisions of the Treaty, however, codecision and unanimity still coexist. The Treaty of Nice (2001) partially puts an end to this situation.

The Intergovernmental Conference (IGC), launched in February 2000, called for an extension of the scope of codecision in parallel with and as a supplement

Glossary of labour law and industrial relations

to the extension of qualified majority voting in the Council. Six provisions for which the IGC planned to apply qualified majority voting are thus also subject to codecision. They are: incentives to combat discrimination; judicial cooperation in civil matters; specific industrial support measures; economic and social cohesion actions (outside the Structural Funds); the statute for European political parties; and measures relating to visas, asylum and immigration. On the other hand, the IGC did not extend the codecision procedure to legislative measures already subject to qualified majority voting (such as agricultural or commercial policy). There is therefore no definitive link yet between qualified majority voting and the codecision procedure for all legislative decisions.

See Intergovernmental Conference (ICG); Treaties.

Co-determination

Employment relations characterized by a significant level of joint consultation and decision-making between workers and management. In some countries such relations are governed by legislation.

Collective bargaining

ILO Convention No. 154 (1981) aims to promote free and voluntary collective bargaining. After defining the term “collective bargaining” and indicating that the Convention applies to all branches of economic activity, the Convention provides that measures adapted to national conditions shall be taken to promote collective bargaining. It defines the aims of these measures and specifies that its provisions do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which the parties to the collective bargaining process voluntarily participate. The Convention provides for prior consultations of the organizations of employers and workers, and specifies that the promotional measures taken shall not hamper the freedom of collective bargaining. The provisions of the Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

Collective redundancies

Dismissals effected by an employer for one or more reasons not related to the individual workers concerned, where according to the choice of the European Union Member States, the number of redundancies is either:

- over a period of 30 days and as set out below:
 - At least ten in establishments normally employing more than 20 and less than 100 workers;

- At least 10 per cent of the number of workers in establishments normally employing at least 100 but less than 300 workers;
- At least 30 in establishments normally employing 300 workers or more,

or

- at least 20 over a period of 90 days, whatever the number of workers normally employed in the establishment in question.

Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the EU Member States relating to collective redundancies aims to approximate Member States' legislation concerning the practical arrangements and procedures for such redundancies and to afford greater protection to workers in the event of collective redundancies. This Directive is a codified version of Directives 75/129/EEC and 92/56/EC, which have been repealed. It does not apply to:

- collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, except where the redundancies take place prior to the date of expiry or the completion of such contracts;
- workers employed by public administrative bodies or by establishments governed by public law;
- the crews of sea-going vessels.

Any employer contemplating collective redundancies must hold consultations with the workers' representatives, with a view to reaching an agreement. These consultations must at least cover ways and means of avoiding redundancies or reducing the number of workers affected and mitigating the consequences, in particular by recourse to accompanying social measures aimed at redeploying or retraining those workers made redundant.

The Directive stipulates that Member States may make provision for workers' representatives to call upon assistance from experts in accordance with measures in force at national level. The employer is to provide workers' representatives with all relevant information and, in any event, is to provide the following information in writing:

- the reasons behind the decision;
- the period during which redundancies are to be effected;
- the number and category of workers normally employed;
- the number to be made redundant;
- the criteria used to select those workers to be made redundant;

Glossary of labour law and industrial relations

- details on the decision of the public authority to reduce this period or to extend it to 60 days;
- the method used to calculate compensation (where applicable).

The employer notifies the competent public authority in writing of any projected collective redundancies. This notification must contain all the relevant information concerning the projected redundancies and consultations held, except for the method used to calculate compensation. However, where the cessation of activity is the result of a court judgment, notification is only necessary at the express request of the authority. The employer forwards a copy of the notification to the workers' representatives, who may send comments to the competent public authority.

Collective redundancies take effect at the earliest 30 days after the notification; the competent public authority uses this period to seek solutions. Member States may grant notification in cases where the problems cannot be resolved. This is not compulsory for collective redundancies following a cessation of activity resulting from a court judgment. Wider powers of extension may be granted. The employer must be informed of any extension and the grounds for it before expiry of the initial period. Member States may apply or introduce provisions which are more favourable to workers.

See Information and consultation (collective redundancies); Procedure for collective redundancies; Termination of employment.

Committee of Experts on the Application of ILO Conventions and Recommendations

The examination of governments' reports on the application of ILO Conventions and Recommendations is carried out in the first instance by the Committee of Experts established for that purpose. The Committee consists of 20 independent persons of the highest standing, with eminent qualifications in the legal or social fields and with an intimate knowledge of labour conditions or administration. Members of the Committee are drawn from all parts of the world. They are appointed by the Governing Body of the ILO on the proposals of the Director-General, in their personal capacity, for a period of three years, their term of office being renewable for successive periods of three years. They meet each year in November/December in Geneva.

It has been said that independence and objectivity are the life-breath of the international judicial inquiry. This statement is fully applicable to the functions and responsibilities of the Committee of Experts. In this connection, it may be useful to quote the words used by the Committee of Experts itself when it reaffirmed its belief in this fundamental principle in 1987:

The Committee's fundamental principles, as voiced on a number of occasions, call for impartiality and objectivity in pointing out the extent to which it

appears that the position in each State is in conformity with the terms of the Conventions and the obligations which that State has undertaken by virtue of the Constitution of the ILO. The members of the Committee must accomplish their task in complete independence as regards all Member States.

Along with its function in examining governments' reports on the application of ratified Conventions, the Committee of Experts examines governments' reports on the situation in national law and practice as regards selected non-ratified Conventions and Recommendations.

In examining the effect given to ratified Conventions, the Committee of Experts is not limited to the information provided by governments. Information on a country's legislation can usually be found in official gazettes and similar publications where laws and regulations are printed. Other documentation available to the Committee may include the texts of collective agreements or court decisions, the conclusions of other ILO bodies such as commissions of inquiry and the Governing Body Committee on Freedom of Association, and comments made by employers' or workers' organizations. Such comments may either be included by the government with its report, or addressed directly to the ILO by the organization concerned. In the latter case, the Office sends a copy of the observations to the government in question, so that the Committee can also consider any comment the government may wish to add in reply. The comments by workers' and employers' organizations on the application of ratified Conventions and, in general, on any other subject covered by governments' reports in the field of international labour standards are of great importance. They enable workers and employers to participate fully in the supervisory system of the ILO, almost continuously and at any time, and thus to contribute to a fuller implementation of international labour standards, as well as to contribute to improving working and living conditions.

Furthermore, a comment from workers' or employers' organizations will typically prompt the Committee of Experts to request a report from the government even before it is next usually due. This places substantial responsibility on the social partners to be aware of the workings of the regular supervisory system.

If the Committee finds that a government is not fully complying with the requirements of a ratified Convention, or with its constitutional obligations regarding Conventions and Recommendations, it addresses a comment to that government, drawing attention to the shortcomings and requesting that steps be taken to eliminate them. The Committee's comment may take the form of:

- *observations*, which are published in its report and which are used for the more serious or long-standing cases of failure to comply with obligations, and are also normally used when a workers' or employers' organization has sent in comments on the application of a ratified Convention which require follow-up; or

Glossary of labour law and industrial relations

- *direct requests*, which are not published but are sent directly to the governments concerned, and to workers' and employers' organizations in the country concerned for information.

Direct requests are usually made when a minor discrepancy is involved, or when the government has not made available sufficient information to enable the Committee of Experts to assess the way in which a ratified Convention is applied. These requests, together with the observations appearing in the Committee's published report, are sent to the government for reply together with the regular request for a report on the application of the Convention concerned.

The Committee's observations are clear and to the point. They are also thorough.

See **Committee on Freedom of Association; International Labour Organization; International labour standards.**

Committee of the Regions (CoR)

Set up in 1994, this European institution, created by the Treaty of Maastricht (1992), aims to increase the participation of European regions in community life. The CoR is composed of 344 representatives of regional and local governments. The Committee has a consultative character, and its opinion is requested by the Council or the European Commission on the following issues: education; training; culture; public health; the fight against drugs; trans-European networks; social and economic cohesion; and structural funds. On certain issues, the CoR works in consultation with the European Economic and Social Committee.

See **European Economic and Social Committee (EESC).**

Committee on Freedom of Association

The ILO Governing Body's Committee on Freedom of Association (CFA) handles hundreds of cases each year. Cases are received even where the government concerned has not ratified the ILO's freedom of association Conventions. Organizations of workers or employers, or governments, may lodge allegations either directly to the ILO or through the United Nations. The Committee is set up to receive and review complaints alleging violation of freedom of association principles. Freedom of association complaints are received and their receivability considered. The government concerned will be asked to provide information and the Committee will examine the documentary evidence. The Committee's report is submitted to the Governing Body. The Governing Body may draw the attention of the government concerned to anomalies, and ask for measures to be taken. The Committee of Experts on the Application of Conventions and Recommendations may be asked to follow up in cases where freedom of association Conventions have been ratified.

See **Committee of Experts on the Application of ILO Conventions and Recommendations.**

Common Agricultural Policy (CAP)

The European Union (EU) Common Agricultural Policy is a matter reserved exclusively for the European Community. Under Article 33, TEC (new Article III-123), its aims are to ensure reasonable prices for Europe's consumers and fair incomes for farmers, in particular by establishing common agricultural market organizations and by applying the principles of single prices, financial solidarity and Community preference. The CAP is one of the most important EU policies (agricultural expenditure accounts for some 45 per cent of the Community budget). Policy is decided by qualified majority vote in the Council after consultation with the European Parliament.

At the outset the CAP enabled the Community to become self-sufficient in a very short time. However, it came to be increasingly costly because European prices were too high by comparison with world market prices. A series of reforms in 1992 corrected the situation by cutting guaranteed farm prices, with compensatory premiums for inputs, and by introducing a series of "flanking measures". With a view to enlargement, a new reform package was adopted in 1999 for the period 2000-06. Under the approach proposed by the European Commission in its Agenda 2000 in July 1997, it reinforced the changes made in 1992 and puts the emphasis on food safety, environmental objectives and sustainable agriculture. Moreover, it has endeavoured to increase the competitiveness of Community agricultural products, to simplify agricultural legislation and how it is implemented, to strengthen the EU position at the 1999 World Trade Organization negotiations (Millennium Round), and lastly to stabilize agriculture expenditure. In this spirit, changes have already been made in the common organization of the market in wine, arable crops, beef and veal, and milk. The proposed reduction in intervention prices has been offset by an increase in aid to farmers and accompanied by a genuine integrated rural development policy.

See **Agenda 2000; World Trade Organization (WTO).**

Communitization

This means transferring a matter that, in the institutional framework of the European Union (EU), is dealt with using the intergovernmental method (second and third pillars) as opposed to the European Community method (first pillar). The Community method is based on the idea that the general interest of EU citizens is best defended when the Community institutions play their full role in the decision-making process, with due regard for the subsidiarity principle. Following the entry into force of the Treaty of Amsterdam in 1999, questions relating to the free movement of persons, which used to come under cooperation on justice and home affairs (third pillar), have been "communitized" and so will be dealt with under the Community method after a five-year transitional phase.

See **Acquis communautaire; Community and intergovernmental methods.**

Community *acquis* *see* **Acquis communautaire**; Incorporation of the Community *acquis*.

Community Acts *see* **Hierarchy of Community Acts (hierarchy of norms)**.

Community and intergovernmental methods

The “Community method” is the term used for the institutional operating mode set up in the first pillar of the European Union. The “intergovernmental method”, in contrast, refers to the mode of the second and third pillars. The Community method proceeds from an integration logic with due respect for the subsidiarity principle, and has the following features:

- commission monopoly on the right of initiative;
- widespread use of qualified majority voting in the Council;
- an active role for the European Parliament;
- uniform interpretation of Community law by the Court of Justice.

It contrasts with the intergovernmental method of operation used in the second and third pillars, which proceeds from an intergovernmental logic of cooperation and has the following salient features:

- the European Commission’s right of initiative is shared with the Member States or confined to specific areas of activity;
- the Council generally acts unanimously;
- the European Parliament has a purely consultative role;
- the Court of Justice plays a minor role only.

See **Communitization**; **Community and intergovernmental methods**.

Community Charter of the Fundamental Social Rights of Workers (Social Charter)

At the European Council of Strasbourg in December 1989, the heads of State and Governments of 11 Member States of the European Economic Community (without Great Britain) adopted a Community Charter of Fundamental Workers’ Social Rights. This text is inspired by similar acts promulgated by other international organizations, such as the European Social Charter of the Council of Europe and the Conventions of the International Labour Organization. The Community Charter fixes the main points on which the European model of labour law is established, and more generally the respect of fundamental rights at the workplace. It establishes a series of social rights that will be guaranteed and put into practice by Member States or by the Commission, in accordance with their competencies. The Community Charter lists 12 principles:

- The right to practise all professions in the chosen country of the European Union (EU);
- the right to an equitable salary;
- the right to the improvement of living and working conditions;
- the right to social protection ensured by the system in force in the hosting country;
- the right to freedom of association and to collective bargaining;
- the right to professional training;
- the right to equality of treatment between men and women;
- the right to information, consultation and participation of workers;
- the right to protection of health and safety in the workplace;
- the right to the protection of young people;
- a guarantee of a minimal income for elderly people;
- the right to the professional and social integration of disabled people.

The Charter represents a solemn declaration which fixes fundamental principles.

The Charter is accompanied by a European Commission working programme containing some 47 initiatives. The action programme is aimed at translating the principles contained in the Charter into minimal norms and submitting them to the Council of Ministers. The action programme did not produce the expected results fixed by the Council of Strasbourg. Two years later, the heads of State and Government meeting in Luxembourg (June 1991) noted that the progress accomplished in the realization of the common market had not been accompanied by similar progress in the domain of social policy. It also underlined that the Community, the Member States and the social partners should play a role in the implementation of the Community Social Charter, according to their respective responsibilities.

At the European Council of Amsterdam (July 1997), the 15 heads of State and Government decided to explicitly refer to the Charter in the Amsterdam Treaty. The Preamble of the Treaty of Amsterdam contains an expression of the deep concern of the 15 concerning “the fundamental social rights as defined in the European Social Charter signed in Turin, October 18, 1961, and in the Community Charter of the Fundamental Social Rights of Workers of 1989”. In the same Treaty, Article 136 (formerly Article 117) on social policy states that the Community and the Member States, bearing in mind fundamental social rights such as those set out in the 1961 European Social Charter, and in the 1989

Glossary of labour law and industrial relations

Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment and improved living and working conditions. This is to make their harmonization possible while maintaining improvement, proper social protection, dialogue between management and labour, development of human resources with a view to lasting high employment, and the combating of social and labour exclusion.

See **Charter of Fundamental Rights of the European Union; Charter of Fundamental Social Rights of Workers.**

Community law

Strictly speaking, European Community law consists of the founding treaties (primary legislation) and the provisions of instruments enacted by Community institutions by virtue of them (secondary legislation). In a broader sense, Community law encompasses all the rules of the Community legal system, including general principles of law, case law of the European Court of Justice, legislation deriving from the Community's external relations, supplementary law contained in conventions and similar agreements concluded between the Member States to give effect to treaty provisions. All these rules of law form part of what is known as the Community *acquis*.

See ***Acquis communautaire*.**

Community legal instruments

The instruments available to Community institutions to carry out their tasks under the first pillar of the European Union, with respect to the subsidiarity principle. They are:

- regulations, binding in their entirety and directly applicable in all Member States;
- directives, binding on the Member States in terms of results to be achieved, and which must be transposed into the national legal framework, thus leaving a margin for manoeuvre as to the form and means of implementation;
- decisions, fully binding on those to whom they are addressed;
- recommendations and opinions, non-binding instruments of a declaratory nature.

See ***Acquis communautaire; Community law*.**

Community powers

These are conferred on the European Community (EC) in specific areas. The European Communities are thus able to act only within the framework of the Treaties. There are three types of powers, which depend on the mode of attribution:

- *explicit powers*: these are clearly defined in the Treaties;
- *implicit powers*: where the European Community has explicit powers in a particular area (e.g. transport), it also has powers in the same field with regard to external relations (e.g. negotiation of international agreements);
- *subsidiary powers*: where the EC has no explicit or implicit powers to achieve a Treaty objective concerning the single market, Article 308 TEC allows the Council, acting unanimously, to take the measures it considers necessary.

See European Communities; Treaties.

Community-scale group of undertakings

A group of European Union (EU) undertakings with the following characteristics:

- at least 1,000 employees within EU Member States;
- at least two group undertakings in different EU Member States;
- at least one group undertaking with at least 150 employees in one EU Member State and at least one other group undertaking with at least 150 employees in another Member State. (See Article 2.1, Directive 94/95/EC, of 22 September 1994, on the establishment of a European Works Council or a procedure in community-scale undertaking and community-scale group of undertakings for the purposes of informing and consulting employees.)

See Consultation of employees; Consultation of employees in a European Company; Controlling undertaking; Statute for a European company.

Community-scale undertaking

Any undertaking with at least 1,000 employees within the European Union Member States and at least 150 employees in each of at least two Member States. (See Article 2.1, lett. a, Directive 94/45/EC of 22 September 1994.)

Comparable permanent worker

Within the European Union Member States, a worker with an employment contract or relationship of an indefinite duration, in the same undertaking, engaged in the same or similar work/occupation, with due regard being given to qualifications and skills. In the event that there is no “comparable permanent worker” in the same undertaking, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice. (See Directive No. 97/81/EC of 15 December 1997.)

See Employers' obligation to inform employees of the conditions applicable to the employment contract or relationship.

Competition

The rules on competition are intended to ensure that a European economic area based on market forces can function effectively. The European Community's competition policy (Articles 81 to 89, TEC) is based on five main principles:

- the prohibition of concerted practices, agreements and associations between undertakings which may affect trade between European Union Member States and prevent, restrict or distort competition within the common market;
- the prohibition of abuse of a dominant position within the common market, in so far as it may affect trade between Member States;
- supervision of aid granted by the Member States, or through State resources in whatever form whatsoever, which threatens to distort competition by favouring certain undertakings or the production of certain goods;
- preventive supervision of mergers with a European dimension, by approving or prohibiting the envisaged alliances;
- liberalization of certain sectors where public or private enterprises have hitherto evolved monopolistically, such as telecommunications, transport or energy.

The first two principles may, however, be subject to derogations, particularly when an agreement between undertakings improves the production or distribution of products or promotes technical progress. In the case of state aid schemes, social subsidies or subsidies to promote culture and conservation of heritage are also examples of possible exceptions to the strict application of competition rules. The difficulty of pursuing an effective competition policy lies in the fact that the Community must continually juggle aims that are sometimes contradictory, since it has to ensure that the quest for perfect competition on the internal market does not make European businesses less competitive in the world market; and that efforts to liberalize do not threaten the maintenance of public services meeting basic needs.

See **Competitiveness**.

Competitiveness

The European Commission's 1994 *White Paper on Growth, Competitiveness and Employment* contains guidelines for a policy of global competitiveness. The policy encompasses four objectives, which have lost none of their topicality today:

- helping European firms adapt to the new globalized and interdependent competitive situation;
- exploiting the competitive advantages associated with the gradual shift to a knowledge-based economy;

- promoting the sustainable development of industry;
- reducing the time lag between the pace of change in supply and the corresponding adjustments in demand.

The new title on employment incorporated in the EC Treaty by the Treaty of Amsterdam takes account of the objectives set in the White Paper.

See **Competition; Treaties.**

Conciliation

An extension to the bargaining process in which the parties try to reconcile their differences. A third party, acting as an intermediary – independent of the two parties – seeks to bring the disputants to a point where they can reach agreement. The conciliator has no power of enforcement and does not actively take part in the settlement process but acts as a broker, bringing people together.

See **Collective bargaining; Mediation.**

Conditions of residence

The regulations governing the residence of a person who lives in the European Union (EU) but is not a national of an EU country. The EU has outlined rules with regard to employment, study, and vocational training.

See **Residence; Residents.**

Confederation

A peak organization of employers or trade unions.

Conference Committee

The report of the ILO Committee of Experts on the Application of Conventions and Recommendations is submitted to each annual session of the International Labour Conference, where it is examined and discussed by a tripartite Conference Committee on the Application of Conventions and Recommendations. The Conference Committee usually comprises well over 150 members from the three groups of delegates and advisers (governments, employers, workers); usually there is an uneven number of government, employers' and workers' representatives on the Committee, and votes are therefore weighted so as to ensure equality of voting strength for the three groups. However, voting is rarely necessary as the Committee almost always adopts its conclusion by consensus. The Committee traditionally elects a Government member as its chair, as well as two vice-chairs, one of whom is an Employer representative, the other representing the Workers' group.

Each year the Committee begins its work with a general discussion, in which it reviews a number of broad issues relating to the ratification and application of ILO standards and the compliance by Member States in general with their

Glossary of labour law and industrial relations

obligation under the ILO Constitution with regard to these standards. In this context, the Committee also discusses the Committee of Experts' general survey of national law and practice with regard to instruments that have been the subject of reports under Article 19 of the Constitution, i.e. reports on non-ratified Conventions and on Recommendations.

After its general discussion, the Committee turns to an examination of individual cases. Governments that have been mentioned in the Committee of Experts' report as not fully applying a ratified Convention may be invited to make a statement to the Conference Committee. There is no formal obligation to do so, but they rarely decline. Some circulate written statements; in many cases their representative appears personally before the Committee. If the committee is not satisfied with a written reply, it gives governments an opportunity to supply fuller information orally. Government representatives may not always find this an easy task, but they know that the Committee takes a positive attitude. Its object is not to apportion blame, but to obtain results. Government spokespersons making statements usually explain frankly their difficulties in applying a particular standard and indicate the steps they propose to take to overcome them. The discussions on individual cases are summarized in the annexes to the report that the Committee submits to the Conference. Their substance can be reviewed through the ILOLEX database (<http://www.ilo.org/ilolex>). In addition, in the Committee's General Report the attention of the Conference is drawn to the most serious cases in which governments have failed to comply with their obligation to implement ratified Conventions fully. Where explanations were given on the difficulties encountered by the governments concerned, those explanations are also briefly mentioned in the General Report.

The Committee's report is submitted to the Conference Committee, which discusses it in one or more plenary sittings. This discussion provides delegates from all the three groups with an opportunity to draw further attention to particular aspects of the Committee's work. Once adopted by the Conference, the report of the Conference Committee is dispatched to governments, their special attention being drawn to points that should be taken into account in the preparation of their next reports to the ILO.

*See **Committee of Experts on the Application of Conventions and Recommendations.***

Consensus

An agreement or an agreed way of handling an issue reached after discussion between various interest groups.

Consolidated maritime labour Convention (ILO)

Shipping has always been international by vocation. It is today the most globalized of all industries. This was unanimously recognized by the social

partners (Shipowners and Seafarers) when they adopted, in January 2001, within the framework of the ILO's Joint Maritime Commission (JMC), a resolution concerning the review of relevant ILO maritime instruments. This resolution, known as the "Geneva Accord", agreed that the shipping industry required an appropriate international regulatory response.

The resolution called for the development of an instrument that would bring together into a consolidated text as much of the existing body of ILO maritime labour instruments as it proved possible to achieve in order to improve the relevance of those standards so as to meet the needs of all stakeholders in the maritime industry. It also provided that the instrument should comprise a number of parts concerning key principles of such labour standards as may be determined, together with annexes that incorporate detailed requirements for each of the parts, and should provide for an accelerated amendment procedure that would ensure that the annexes were kept up to date. In keeping with the resolution, a High-level Tripartite Working Group (HLTWG) and a Sub-group of the High-level Group were established to assist with the development of the instrument. This was followed by a Preparatory Technical Maritime Conference in September 2004, and a Maritime Session of the International Labour Conference is scheduled for early in 2006. This article is based on the outcome of the Preparatory Technical Maritime Conference.

At the first meeting of the HLTWG in December 2001, the Shipowners' and Seafarers' representatives and the Government representative set the objectives of the new instrument as regards its substantive content, structure and approach. It was envisaged that the Convention would:

- incorporate, as far as possible, the substance of all relevant maritime labour standards with any necessary updating;
- be easily updatable to keep pace with developments in the maritime sector;
- be drafted in such a way as to secure the widest possible acceptability;
- place emphasis on the means of enforcing its provisions in order to establish a "level playing field"; and
- be structured in such a way as to facilitate the achievement of the above objectives.

With respect to the substance of the instrument, the concerns of both the Shipowners and Seafarers were essentially to bring the system of protection contained in existing standards closer to the workers concerned. This was to be done in a form that was consistent with this rapidly developing, globalized sector and that would improve its applicability so that Shipowners and Governments interested in providing decent conditions of work would not have to bear an unequal burden in ensuring such protection.

Glossary of labour law and industrial relations

Regarding the structure of the Convention, it was agreed that the proposed instrument would comprise three different but related parts, the Articles, the Regulations and the Code.

The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. They could only be changed by the General Conference within the framework of article 19 of the Constitution of the International Labour Organization.

The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines). The Code, except for Title 5, can be amended through a simplified procedure set out in the Convention.

The Regulations and the Code are organized into general areas under five Titles:

1. Minimum requirements for seafarers to work on a ship;
2. Conditions of employment;
3. Accommodation, recreational facilities, food and catering;
4. Health protection, medical care, welfare and social security;
5. Compliance and enforcement.

The simplified amendment procedure that exists in the new consolidated Convention has been developed to ensure that it would be easily updatable. Article XIV of the Convention provides that it can be amended by the General Conference within the framework of article 19 of the ILO Constitution. In addition, the Code could be amended by a simplified process that has been developed to meet the need for more rapid updating of the technical parts of the Convention, without the need for an entire revision. Article XV introduces the most important innovation of the new Convention: the amendment of certain provisions (the Code) through a simplified amendment procedure based on what is called “tacit acceptance” rather than express ratification. This simplified amendment procedure is similar to that provided for in Conventions adopted within the framework of the International Maritime Organization (IMO), but has been adapted to the special features of the International Labour Organization, and above all its tripartite structure. In particular, the revision of a Convention is a matter for the Organization as a whole rather than only for the Members that have ratified it.

The Convention provides for six steps for the simplified amendment procedure involving: (i) the submission to the Director-General of the amendment proposal meeting certain conditions; (ii) circulation of the proposal; (iii) submission to the special tripartite Committee for consideration and adoption; (iv) submission to the International Labour Conference for approval;

(v) notification to ratifying Member States; and (vi) amendment taking effect for all ratifying Members that have not expressed disagreement (or taken similar action) within a prescribed time limit unless the number of States expressing disagreement attains a specified level or weight. The consolidated Convention therefore respects the principle that, once a Member has accepted the text of a Convention by ratification, it cannot be bound, against its will, by any changes to that text while new ratifying Members are in a different situation. If they decide to ratify the Convention, they must accept the text as amended.

The provisions in the new Convention concerning compliance and enforcement represent another innovative aspect. While other Conventions frequently contain provisions relevant to enforcement, such as the requirement to keep records, to establish penalties for non-compliance, and to have adequate internal complaints or recourse procedures, the innovation in the new consolidated Convention takes the various aspects of enforcement at the national level and places them in a separate part (Title 5) transcending the whole Convention. For traditional enforcement practices in the maritime sector through flag and port State inspections and corrective actions, the provisions in Title 5 draw on the text of the existing ILO standards in the area of compliance and enforcement such as, *inter alia*, the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

Title 5 will provide for a level playing field among Member States of the Organization concerning the provision and implementation of the principles and rights of the Convention, as well as the employment and social rights for seafarers. For this reason, the principle of “no more favourable treatment” is one of the important legal foundations for the provisions on compliance and enforcement in Title 5 of the new Convention. According to this principle, ships of States that had not ratified the Convention would not be able to provide the certification and documentation required by the consolidated Convention. Such ships would therefore always be liable to inspection by port States and the provisions on port state control of the Convention would apply to them. This principle may thus provide an incentive for ratification of the Convention and help to secure a level playing field with respect to employment rights.

One of the major aspects of the enforcement regime consists of a requirement for each Member to establish a system of certification and documentation of compliance covering conditions on board ship, as well as an overall system of quality standards and control covering implementation of the Convention in general. The system proposed in Title 5 embodies aspects of the well-accepted certificate-based system of the IMO. It has, however, been adapted in the proposed Convention to meet the ILO context and the special concerns raised by international labour standards. The proposed maritime labour standards certification system would require each ship to carry:

Glossary of labour law and industrial relations

- a maritime labour certificate, confirming that the working and living conditions on the ship have been inspected and meet the requirements of the flag State's national law implementing the Convention and that measures adopted by the shipowner to ensure ongoing compliance are satisfactory; together with
- a declaration of labour compliance, which would state what those requirements are and how they are to be complied with.

The consolidated Convention will create a continuity of “compliance awareness” at every stage from the national systems of protection up to the international system. It would start with the individual seafarers, who – under the Convention – would have to be properly informed of their rights and of the remedies available in case of alleged non-compliance; it would continue with the shipowners, who would be required to develop and carry out plans for ensuring that the laws, regulations or other measures to implement the Convention are actually being complied with. The masters of the ships concerned would then be responsible not only for carrying out the plans, but also for keeping proper records to provide evidence of implementation of the requirements of the Convention. In addition to the traditional functions of inspection of ships, the flag States would have to control the shipowners' plans and ensure that they were actually in place and being implemented. They would also have to carry out periodic quality assessments of the effectiveness of their national systems of compliance, and their reports to the ILO under article 22 of the Constitution would need to provide information on their inspection and certification systems, including on their methods of quality assessment. This general system in the flag State would be complemented by procedures to be followed in countries that are also or even primarily the source of the world's supply of seafarers, which would also be reporting under article 22 of the ILO Constitution, and the mechanisms of port state control would help to reduce any failings on the part of flag States.

A special tripartite committee will be established by the ILO Governing Body. It will be charged with generally reviewing the working of the new Convention, and will be given specific functions with respect to the proposed simplified amendment procedure for the Code. It will consist of representatives of Governments that have ratified the new Convention and of Shipowner and Seafarer representatives chosen by the Governing Body (who might in practice be the same as the members of the Joint Maritime Commission). The Government representatives of non-ratifying Members could participate in the committee but would have no right to vote.

See Working time in the maritime sector (ships using Community ports).

Consolidation of European legislation, formal/official

Formal or official consolidation of European Union legislation involves adopting new legal instruments, published in the *Official Journal* (L series) that

incorporates and repeals the instruments being consolidated (basic instruments plus amending instrument(s)) without altering their substance. The consolidation can be:

- vertical, in which case the new instrument incorporates the basic and amending instrument into a single instrument;
- horizontal, in which case the new instrument incorporates several parallel basic instruments and amendments thereto, relating to the same subject.

Consolidation of European legislation, informal/declaratory

A special procedure for the unofficial and declaratory consolidation of European Union legislation and the simplification of legal instruments. The incorporation of subsequent amendments into the body of a basic act does not entail the adoption of a new instrument. It is simply a clarification exercise conducted by the Commission. The resulting text, which has no formal legal effect, can, where appropriate, be published in the *Official Journal* (C series) without citations or recitals.

Consultation, communications and grievances

In the field of industrial relations, the following ILO Recommendations, although their provisions are not mandatory, have nevertheless provided guidelines in many instances and their standards have been widely recognized concerning questions of consultation, communication and the examination of grievances:

- The Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), seeks to promote consultation and cooperation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining or of other machinery for the determination of terms and conditions of employment. These practices are facilitated in the first instance by voluntary agreements between the parties, or alternatively by appropriate laws or regulations establishing bodies for consultation, and so on, or by both these methods.
- The Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), deals with measures to be taken for consultation and cooperation between public authorities and employers' and workers' organizations, as well as between these organizations, at industrial and national levels. These measures should have the general objective of promoting mutual understanding and good relations between the three parties with a view to developing the economy as a whole or individual branches of it (including development plans and the functioning of national bodies), improving

Glossary of labour law and industrial relations

conditions of work and raising standards of living (including the preparation and implementation of relevant laws and regulations). Such measures, to be taken by voluntary action of the parties concerned, or by promotional action of the public authorities and, where appropriate, by laws or regulations, should not derogate from either freedom of association or collective bargaining, nor should they discriminate between organizations.

- The Communications within the Undertaking Recommendation, 1967 (No. 129), sets out the elements of a communications policy within the undertaking. Having pointed out the common interests of employers and workers and their respective organizations in recognizing the importance of a climate of mutual understanding and confidence within undertakings, the Recommendation proposes ways of establishing such a climate. It encourages the dissemination and exchange of information as complete and objective as possible, relating to the various aspects of the life of the undertaking and to the social conditions of the workers. This should take place after consultation with workers' representatives and should in no way derogate from freedom of association.
- The Examination of Grievances Recommendation, 1967 (No. 130), which may be given effect through national laws or regulations, collective agreements, works rules or arbitration awards, or in another manner consistent with national practice, provides that any worker who considers that he/she has grounds for a grievance should have the right (acting individually or jointly with others) to submit such grievance and have it examined. Various principles and procedures applicable in this respect are set out in detail.

See International labour standards.

Consultation of employees

According to European Union legislation, the exchange of views and establishment of dialogue between employees' representatives and central management, or any more appropriate level of management. (See Directives 89/391/EC, 94/45/EC, 98/59/EC, 2001/23/EC, 2001/86/EC and 2002/14/EC.)

Consultation of employees in a European Company

This means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the Statute for a European company (SE), at a time, in a manner and with a content that allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE. (See Article 2, Directive 2001/86/EC.)

See Statute for a European Company.

Contract labour *see* **Labour clauses (public contracts).**

Controlling undertaking

According to European Union (EU) legislation, an undertaking that can exercise a dominant influence over another undertaking (the controlled undertaking), for example by virtue of ownership, financial participation or the rules that govern it. The ability to exercise a dominant influence shall be presumed without prejudice, when in relation to another undertaking. An undertaking directly or indirectly:

- holds a majority of that undertaking's subscribed capital, or
- controls a majority of the votes attached to that undertaking's issued share capital, or
- can appoint more than half of the members of the undertaking's administrative, management or supervisory body (Article 3.2, Directive 94/45/EC).

A controlling undertaking's rights to voting and appointment include rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking. An undertaking shall not be deemed to be a "controlling undertaking" with respect to another undertaking in which it has holdings, where the former undertaking is a company referred to those defined by Council Regulation 4064/89/EEC of 21 December 1989, on the control of concentrations between undertakings. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his/her functions according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments or similar proceedings.

The applicable law in order to determine whether an undertaking is a "controlling undertaking" shall be the law of the EU Member State that governs that undertaking. Where the law governing that undertaking is not that of a Member State, the applicable law shall be the law of the Member State on the territory of which the representative of the undertaking is situated – or in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees. In the case of a conflict of laws, if two or more undertakings from a group satisfy one or more of the criteria laid down in Directive 94/45/EC, the undertaking that satisfies the criterion of being able to appoint more than half of the members of the undertaking's administrative, management or supervisory body shall be regarded as the controlling undertaking, without prejudice to proving that another undertaking is able to exercise a dominant influence.

See **Community-scale group of undertakings.**

Convention on the Future of Europe

Launched on 28 February 2002, the Convention brings together representatives of the heads of governments and of the parliaments of the European Union Member States and the candidate countries, representatives from the European Commission and the European Parliament, as well as a number of observers. In total there are 105 participants; their task was to debate the issues raised by the Laeken Declaration and formulate an agenda for the 2004 Intergovernmental Conference (IGC). The Convention is modelled on the Charter of Fundamental Rights of 2000, and is a response to growing concerns about popular perceptions of the remoteness of IGCs. Supporters of the Convention believe that it has the ability to reach decisions on the future of the EU that more accurately reflect the concerns and wishes of EU citizens.

See **Charter of Fundamental Rights of the European Union; European Constitution; Intergovernmental Conference (IGC); Laeken Declaration.**

Coordinated strategy for employment

The Treaty of Amsterdam (1997) introduces the concept of a coordinated strategy for employment that follows on from the integrated strategy for employment launched at the Essen European Council in December 1994. In Essen the European Council asked the European Union (EU) Member States to draw up multi-annual programmes for employment (MAPs) and to provide the European Commission with reports on their implementation. These reports describe the main measures taken by the governments to apply their multi-annual programmes over the last 12 months, assess the impact of these measures on employment – in certain cases – and announce major changes or new initiatives in this field. The “Essen strategy” was refined by the European Council in Madrid (December 1995) and Dublin (December 1996), on both occasions on the basis of a joint report by the Commission and the Council summarizing the reports on the implementation of the MAPs. In Florence (June 1996) and Amsterdam (June 1997), the European Council received a more succinct interim joint report. With the Treaty of Amsterdam, a new title on employment has been written into the EC Treaty, introducing the concepts of a coordinated strategy and guidelines for employment. In practical terms, there are two main innovations:

- the Council draws up guidelines for employment each year that are compatible with the broad lines of economic policy; it does so acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee;
- the Council can also make recommendations to the EU Member States in the light of its annual review of their employment policies, acting by a qualified majority on a recommendation from the Commission.

The Amsterdam European Council decided that the relevant provisions of the new title on employment should be put into effect immediately and they have been applied since June 1997.

See Employment; Employment General Principles; Treaty of Amsterdam.

Copenhagen criteria

The basic criteria to be fulfilled by countries applying to join the European Union (EU), as established by the European Copenhagen Council in 1993: stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities; a functioning market economy; and adherence to the *acquis communautaire* (EU legislation).

See Acquis communautaire.

Core labour standards

A concept relevant for a discussion of whether trade and labour standards should be part of trade policy. According to international studies on labour standards, core labour standards should include (a) freedom of association and collective bargaining, (b) elimination of exploitative forms of child labour, (c) prohibition of forced labour, in the form of slavery and compulsory labour, and (d) non-discrimination in employment, i.e. the right to equal respect and treatment for all workers. All of them are considered basic human rights. Core labour standards are defined in ILO Conventions and Recommendations.

See International labour standards.

Council of Europe

The Council (which should not be confused with either the Council of the European Union or the European Council) was formed in 1949 as Western Europe's first post-war political organization. Its Statute was signed as the Treaty of London by 10 States. Its offices were established in Strasbourg. Its declared objective was to achieve "a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common and heritage and facilitating their economic and social progress". These objectives were to be secured through "discussions of questions of common concern and by agreements and common action in economic, social, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms".

Its membership grew until, by the 1980s, it incorporated all the non-Communist States of Europe. The Council consists of two bodies: a Committee of Ministers and an Assembly. With each State having one vote and a veto, the Committee of Ministers is essentially an intergovernmental conference of foreign ministers meeting twice yearly. Since 1952, the practice of deputies (usually diplomats) representing the ministers has been normal for all but the

most symbolic meetings. In relaying decisions to the Member States, the Committee is allowed to make recommendations only. States are not obliged to accept decisions of the Council of Europe.

Similarly, the Assembly, renamed the Parliamentary Assembly in 1974, is essentially a discussion chamber, with hardly any substantive powers. Ever since its first session in 1949, the majority of the delegates, who are appointed by their national parliaments, have been strong supporters of European integration. The fact that it has shared a common home in Strasbourg with the European Parliament has helped this commitment. However, the Assembly can only forward recommendations to the Committee of Ministers, which can, and often does, ignore or reject them at will.

The Council of Europe has produced over 120 Conventions and agreements, most of which have been accepted by almost all the Member States. Its greatest achievement, perhaps, was to secure agreement on a European Convention on Human Rights in 1950, with a concomitant European Commission of Human Rights and a European Court of Human Rights, both of which operate under the aegis of the Council. Much of the Council of Europe's success has been in the less politically contentious cultural field. It sponsored, for example, the European Cultural Convention in 1954 and a European Social Charter in 1961. In 1960 it was handed the social and cultural responsibilities that the Western European Union had been granted by the Treaty of Brussels 1948. In the 1950s it also sought to achieve some form of policy coordination in agriculture, civil aviation and transport. However, by itself the Council could not advance European integration much beyond such symbolic actions as seating the Assembly delegates in alphabetical order rather than by nationality. The United Kingdom and the Scandinavian States were firmly opposed to it becoming anything more than an intergovernmental deliberative body. After the early 1950s it was overtaken by the developments that led to the establishment of the European Communities (EC).

While its major historical significance was that it was the first European organization of a political nature, the later importance of the Council of Europe was twofold. It was the European organization with the broadest membership, albeit limited to democracies, a claim that was later challenged by the formation of the Conference on Security and Cooperation in Europe in Helsinki, 1975. Also, because of its broad membership, it remained important as a forum where a wide range of ideas and views could be expressed, and as a central clearing-house for cooperation and coordination, receiving and discussing annual reports from a wide range of European and other international organizations and agencies, including the EC. The ending of the Cold War offered the Council an opportunity to expand its membership, and in the early 1990s most of the Central and Eastern European countries and the western republics of the former USSR (for example, the Russian Federation) either joined the Council or at least applied for membership.

See **European Communities; European Convention on Human Rights (ECHR).**

Council of the European Union

The Council of the European Union (the Council, sometimes referred to as the Council of Ministers) is the Union's main decision-making institution. It consists of the ministers of the 25 Member States responsible for the area of activity on the agenda: foreign affairs, agriculture, industry, transport and so on. Despite the existence of these different configurations depending on the area of activity, the Council is nonetheless a single institution. Each Member State in turn holds the chair for six months. Decisions are prepared by the Committee of Permanent Representatives of the Member States (COREPER), assisted by working parties of national government officials. The Council is assisted by its General Secretariat. Council decisions under the first pillar are adopted on the basis of Commission proposals. Following entry into force of the Treaty of Amsterdam in May 1999, the Secretary-General also acts as High Representative for the Common Foreign and Security Policy, assisted by a Deputy Secretary-General appointed by unanimous decision by the Council and responsible for running the Council's General Secretariat. Given the prospect of enlargement, the Treaty of Nice, which came into force in 2003, extended the scope of decisions adopted by qualified majority to other areas and to certain other aspects of policies already subject in part to qualified majority voting, such as the common commercial policy.

See Treaties.

Court of Auditors *see* **European Court of Auditors**

Court of First Instance of the European Communities (CFI)

The CFI was set up in 1989 to strengthen the protection of individuals' interests by introducing a second tier of judicial authority, allowing the Court of Justice of the European Union to concentrate on its basic task of ensuring the uniform interpretation and application of Community law. The CFI is currently made up of 15 judges appointed by common accord of the Governments of the Member States to hold office for a renewable term of six years. It should be noted that in response to a request submitted by the Court of Justice, outside the framework of the Intergovernmental Conference, the Permanent Representatives' Committee agreed to increase the number of judges for the CFI to 21. The arrangements regarding the system of rotation for appointments still has to be decided.

The Treaty of Nice (2001) introduced greater flexibility for adapting the CFI's statute, which can henceforth be amended by the Council acting unanimously at the request of the Court of Justice or of the European Commission. The approval of the rules of procedure of the Court of Justice and of the Court of First Instance will in future be by qualified majority. To ease the workload of the Court of Justice, the Treaty of Nice also aimed to improve the distribution of responsibilities between the Court and the CFI, making the CFI the ordinary

Glossary of labour law and industrial relations

court for all direct actions (appeals against a decision, failure to act, damages, etc.), with the exception of those assigned to a judicial panel and those reserved for the Court of Justice. The Treaty also provides for the creation, based on a right of initiative shared between the Court of Justice and the Commission, of judicial panels to examine at first instance certain types of actions in specific matters to relieve the burden on the CFI. Finally, the Nice Treaty provides for the possibility of conferring on the CFI the right to deliver preliminary rulings in certain specific areas.

See **Court of Justice of the European Union; Treaties.**

Court of Justice of the European Union

The Court is composed of as many judges as there are Member States. At present it has 25 judges assisted by eight advocates-general appointed for six years by agreement among the Member States. It may sit in chambers, or in plenary session for cases that are particularly important or complex and at the request of a Member State.

The Court has two principal functions:

- to check whether instruments of the European institutions and of governments are compatible with the Treaties;
- to pronounce, at the request of a national court, on the interpretation or the validity of provisions contained in Community law.

The Court is assisted by the Court of First Instance of the European Communities (CFI), which was set up in 1989. The Treaty of Nice (2001) put into place a major reform of the Union's court system. As far as the Court of Justice is concerned, the most important points are listed below:

- greater flexibility to adapt the statute of the Court of Justice, which can now be amended by the Council, acting unanimously at the request of the Court or the Commission;
- approval of the Court's Rules of Procedure by the Council is now done by qualified majority;
- a new Article 229a, TEC, enables the Court to be awarded jurisdiction in disputes relating to Community industrial property rights, by unanimous decision by the Council and after ratification by the national parliaments;
- a better division of powers between the CFI and the Court, relieving the latter of some of its workload.

See **Court of First Instance of the European Communities (CFI); Treaties.**

D

Decent work

According to the ILO, decent work means the promotion of decent and productive work in conditions of freedom, equity, security and human dignity for women and men everywhere. The overarching objective embraces four strategic objectives: promoting rights at work; generating employment and income; extending social protection and social security; and strengthening social dialogue.

Decent Work Agenda

An overarching ILO programme in which freely chosen productive employment is promoted simultaneously with fundamental rights at work, and adequate income from work and the security of social protection.

See **Decent work**.

Declaration on Fundamental Principles and Rights at Work

The ILO Declaration, adopted in June 1998, recalls:

- that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the International Labour Organization to the best of their resources and fully in line with their specific circumstances;
- that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;

Glossary of labour law and industrial relations

- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

In this regard the Declaration recognizes the obligation of the ILO to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to Article 12 of its Constitution, to support these efforts:

- by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
- by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions; and
- by helping the Members in their efforts to create a climate for economic and social development.

The Declaration emphasizes that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its Follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its Follow-up.

The International Labour Conference established a follow-up to the Declaration, contained in an Annex to the Declaration itself. The first part is an annual review of countries that have not ratified one or more of the Conventions relating to the four categories of fundamental rights, to be carried out once a year. The second part provides for a global report to be produced annually on one of the four categories of fundamental rights. Each area is examined in turn and covers the situation in both those countries which have ratified the relevant Conventions and those which have not. Global reports from 2000 have focused on freedom of association and the right to collective bargaining, the elimination of forced labour, the effective abolition of child labour, and the elimination of discrimination in employment.

The Follow-up to the Declaration is promotional in nature and will provide a new avenue for the flow of information on economic and social development needs relating to these rights and principles, thereby assisting in the design, implementation and evaluation of targeted technical cooperation programmes.

See Abolition of forced labour; Child labour; Decent Work Agenda; Discrimination (employment and occupation); Freedom of association and protection of the right to organize.

Declaration of Philadelphia

In 1944, the International Labour Conference, meeting in Philadelphia, United States, adopted the Declaration of Philadelphia, which redefined the aims and purpose of the ILO. The Declaration embodies the following principles:

- Labour is not a commodity.
- Freedom of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes a danger to prosperity everywhere.
- All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

See ILO Constitution.

Delegate/shop steward/union representative

A worker who is the representative for his/her union at the enterprise and/or workplace. The delegate also acts as a link between the full-time union officials located outside the enterprise and union members in the enterprise. Delegates are mostly elected by union members who work in the same enterprise.

Dependant care

The provision of care for those who are young, ill, elderly or disabled, and dependent on others.

See Childcare.

Derived rights

These are rights, notably to social security benefits or residence, which accrue to an individual but which originate from and depend on his/her relationship with another person, usually due to parenthood, marriage or cohabitation.

Desegregation of the labour market

This refers to policies aiming to reduce or eliminate segregation (vertical and horizontal) in the labour market.

Development aid

The beginnings of the European Community's development policy coincided with the signature of the Treaty of Rome in 1957, and the Member States' overseas countries and territories were its first beneficiaries. However, it is only since the entry into force of the Treaty on European Union (1992) that this policy has enjoyed a specific legal basis (Articles 177 to 181, TEC). With the successive enlargements of the European Union (EU), cooperation has gradually extended to other countries, such as the African, Caribbean and Pacific countries

Glossary of labour law and industrial relations

(ACP) which have a particularly close and long-standing relationship with certain EU Member States. The Cotonou Agreement, signed in June 2000, has strengthened this partnership, which is to a large extent based on the various Lomé Conventions, the first of which was signed in 1975. In addition to these initial agreements, other countries also benefit from the Community's development policy, such as the countries of Latin America and Asia.

The main objective of the European Community's development policy is to eradicate poverty. This policy is implemented not only through bilateral and regional agreements but also through specific programmes in certain sectors such as health, particularly with a view to combating communicable diseases, and education. The development policy also entails cooperation with international institutions and the participation of the Community and Member States in initiatives implemented at global level such as the Initiative for Highly Indebted Poor Countries.

Dignity at work

This refers to the right to respect, and in particular the right to freedom from sexual and other forms of harassment in the workplace. The European Union (EU) Charter of Fundamental Rights (2000) includes a section dealing with dignity. The Charter is part of the Treaty establishing a Constitution for Europe (2004). Citizens can refer to it when challenging decisions taken by EU institutions. (See EU Council Resolution 90/C 157/02 of 29 May 1990, and EU Commission Regulation 92/131 of 27 November 1991; see also EU Directives 2000/78 EC of 27 November 2000 and 2000/43 EC of 20 June 2000.)

See **Charter of Fundamental Rights of the European Union; Sexual harassment.**

Directive *see* **Community legal instruments.**

Disability and work

Work of decent quality is the most effective means of escaping the vicious circle of marginalization, poverty and social exclusion. People with disabilities are frequently trapped in this vicious circle, and positive action is needed to assist them in breaking out of it. Barriers that disabled people face in getting jobs and taking their place in society can and should be overcome through a variety of policy measures, regulations, programmes, and services.

The ILO promotes equality of opportunity and treatment for persons with disabilities in vocational rehabilitation, training and employment, as reflected in the Vocational Rehabilitation of Employment of Disabled Persons Convention, 1983 (No. 159), and the ILO code of practice *Managing disability in the workplace*, published in 2001. It works to increase knowledge on the training and employment of people with disabilities, and supports policy makers and social partners in the design and implementation of vocational training and

rehabilitation programmes, as well as in policy and legislation. It assists governments, social partners and organizations of persons with disabilities to develop national vocational policies and programmes in different parts of the world.

See Disabled people.

Disability strategy of the European Union

A society open and accessible to all is the goal of the European Union (EU) Disability Strategy. The barriers need to be identified and removed. This approach has been stimulated by the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities. The Strategy has three main focuses:

- cooperation between the European Commission and the EU Member States;
- full participation of people with disabilities;
- mainstreaming disability in policy formulation.

The European Commission considers that people with disabilities should be involved in the planning, monitoring and evaluation of changes in policies, practices and programmes. The Commission's dialogue with the European Disability Forum (EDF), an umbrella organization, is an example of such practice. The Commission is committed to involving the social partners in efforts to integrate people with disabilities into the labour market. The social partners adopted a Joint Declaration on the Employment of People with Disabilities in 1999. Another example is the EQUAL initiative (2000–06), where social partners and other key players, including representatives of groups who are discriminated against in the labour market, are involved in developing and testing out new ideas on job creation. The Commission pays particular attention to disability aspects in its socio-economic policies, programmes and projects. The Unit for the Integration of People with Disabilities is responsible for mainstreaming disability matters within the Commission. Its purpose is to raise awareness of disability matters and to facilitate and encourage cooperation among Directorates-General.

Most of the practical work of making a society accessible can best be achieved in the Member States. The subsidiarity principle applies – what can be achieved better at national level shall be done at national level. But even where the Member States are the principal actors, the Commission may play a part by aiming to:

- strengthen cooperation with and between the Member States in the disability field;
- promote the collection, exchange and development of comparable information and statistics, and good practice;

Glossary of labour law and industrial relations

- raise awareness of disability issues;
- take account of disability issues in all policy making and legislative work of the Commission – external and internal.

A forum for exchange with the Member States is the High Level Group of Member States' Representatives on Disability which meets on a regular basis. Awareness raising is part of the European Day of Disabled People, which takes place in December each year, and of the National Information Days on disability issues. The year 2003 was designated as the European Year of Disabled People.

Changing attitudes towards people with disabilities in the area of employment is a key issue. Disability aspects are included in the National Action Plans on Employment and in the National Action Plans against Poverty and Social Exclusion. In deciding on an EU Anti-discrimination Directive in November 2000, the Member States undertook (if they have not already done so) to prohibit discrimination of people with disabilities and others in the labour market, in the workplace and in vocational training. Reasonable accommodation – adaptation – of the workplaces to the needs of people who have disabilities is a major change in this legislation. The EU Charter of Fundamental Rights (2000) combined in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources.

See **EQUAL; Equal treatment in employment and occupation; Disability and work; Disabled people; Discrimination.**

Disabled people

Under the Treaty of European Union (EU) and legislation, disabled people have the right to expect freedom from discrimination and recourse through the EU's channels.

See **Disability and work; Disability strategy of the European Union; Equal treatment in employment and occupation; Fundamental rights; Non-discrimination principle.**

Discrimination

The Treaty on European Union (1992) ensures that protection from discrimination based on nationality, gender, race, ethnic origin, religion, disability, age or sexual orientation is a fundamental right of EU citizenship.

See **Equal treatment in employment and occupation; Fundamental rights.**

Discrimination (employment and occupation)

ILO Convention No. 111 (1958) aims to promote equality of opportunity and treatment in respect of employment and occupation. This Convention assigns to each ILO Member State which ratifies it the fundamental aim of promoting equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination with respect to employment and

occupation. Discrimination is defined as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin (or any other motive determined by the State concerned) that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Ratifying States undertake to repeal any statutory provisions and modify any administrative instructions or practices that are inconsistent with this policy, and to enact legislation and promote educational programmes that favour its acceptance and implementation, in cooperation with employers' and workers' organizations. This policy shall be pursued and observed with respect to employment under the direct control of a national authority, and of vocational guidance and training, and placement services under the direction of such an authority.

See Equal opportunities; articles on "Equality" and "Equal treatment".

Dismissal

The termination of the employment contract of a worker by management. Dismissal may be for cause (e.g. serious misconduct, insubordination or inefficiency) or take the form of retrenchment for reasons related to the economic circumstances of the enterprise. Whatever the case, the circumstances of dismissal and any conditions/entitlements are governed by law, the individual contract of employment or a collective agreement, supplemented by the personnel policies of individual organizations.

See Termination of employment.

Disputes/dispute settlement *see Arbitration; Industrial conflict; Industrial dispute.*

Diversity

This refers to the range of values, attitudes, cultural perspective, beliefs, ethnic background, sexual orientation, skills, knowledge and life experiences of the individuals making up any given group of people.

Division of labour (by gender)

The division of paid and unpaid work between women and men in private and public life.

Dublin Foundation *see European Foundation for the Improvement of Living and Working Conditions.*

Dumping

This occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic

Glossary of labour law and industrial relations

market or third-country markets, or at less than production cost. GATT Article VI, which deals with anti-dumping, and countervailing duties, does not actually prohibit dumping. It merely says that GATT parties recognize that dumping is to be condemned if it causes or threatens material injury to an established industry or retards the establishment of a domestic industry in the territory of another member. If enquiries in the importing country show that dumping is taking place and causing material injury to an industry, governments may take anti-dumping measures. Dumping has on occasion been confused with the import of products benefiting from the payment of subsidies. In trade policy, dumping refers to the conduct of individual firms that see some advantage in discriminatory pricing arrangements and that finance these from their own resources. Subsidies, on the other hand, are paid, directly or indirectly, to industries by governments. The effect of subsidized and dumped products on the importing market can be the same.

International studies have identified four categories of dumping: (a) price dumping for which the rules ultimately appearing in GATT Article VI were made; (b) service dumping, where a price advantage for a product comes about because dumping occurs in the provision of shipping services; (c) exchange dumping, based on manipulation of the exchange rate to achieve a competitive edge; and (d) social dumping, caused by the import at low prices of goods made by prison or forced labour.

See **General Agreement on Tariffs and Trade (GATT); Social clause; Social dumping.**

Economic and Monetary Union (EMU)

This is the name given to the process of harmonizing the economic and monetary policies of the Member States of the European Union with a view to the introduction of a single currency, the euro. It was the subject of one of the two Intergovernmental Conferences (IGCs) which concluded their deliberations in Maastricht in December 1991.

The Treaty provides that EMU is to be achieved in three stages:

- first stage (1 July 1990 to 31 December 1993): free movement of capital between Member States, closer coordination of economic policies and closer cooperation between central banks;
- second stage (1 January 1994 to 31 December 1998): convergence of the economic and monetary policies of Member States (to ensure stability of prices and sound public finances) and the creation of the European Monetary Institute (EMI) and, in 1998, of the European Central Bank (ECB);
- third stage (from 1 January 1999): irrevocable fixing of exchange rates and introduction of the single currency on the foreign-exchange markets and for electronic payments, followed by the introduction of euro notes and coins from 1 January 2002.

The third stage of EMU was launched in 11 Member States, which were joined two years later by Greece. Three Member States have not adopted the single currency: the United Kingdom and Denmark, both of which benefit from an opt-out clause, and Sweden, which does not at present meet all of the criteria regarding the independence of its central bank. On 1 January 2002 euro notes and coins were introduced in the Member States, gradually replacing the national currencies ("legacy" currencies). On 28 February 2002 the transitional stage of dual circulation of the legacy currencies and the euro came to an end. The euro is de facto the sole currency for more than 476 million Europeans. The challenges facing the long-term success of EMU are continued budgetary consolidation and closer coordination of Member States' economic policies.

See **European Central Bank.**

Economic and social cohesion

At the European level, the origins of economic and social cohesion policy go back to the Treaty of Rome (1957), where a reference is made in the preamble to reducing regional disparities. In the 1970s, European Community (EC) action was taken to coordinate the national instruments and provide additional financial resources. Subsequently these measures proved inadequate given the situation in the Community where the establishment of the internal market, contrary to forecasts, had failed to even out the differences between regions. With the adoption of the Single European Act in 1986, economic and social cohesion proper was made an objective alongside the completion of the single market. The Maastricht Treaty (1992) finally incorporated the policy into the EC Treaty itself (Articles 158 to 162; new Articles 214 to 218 EC).

Economic and social cohesion is an expression of solidarity between the Member States and regions of the European Union (EU). The aim is to have balanced development throughout the EU, reducing structural disparities between regions and promoting equal opportunities for all individuals. In practical terms this is achieved by means of a variety of financing operations, principally through the Structural Funds and the Cohesion Fund. Besides the reform of the common agricultural policy and enlargement to the Central and Eastern European countries, regional policy was one of the major issues discussed in Agenda 2000, largely because of the financial implications. It is the Community's second largest budget item, with an allocation of EUR 213 billion for the period 2000-06. Every three years the European Commission presents a report on progress made in achieving economic and social cohesion, and on how EC policies have contributed to it. The main criteria used for analysis are gross domestic product (GDP), employment and factors promoting sustainable development.

With the enlargement in May 2004, European policies started to concentrate on crucial development concerns while continuing to support regions which have not completed the process of convergence in real terms (particularly in Spain, Greece and Portugal), and on geographical areas facing specific structural problems (areas undergoing industrial restructuring, urban areas, rural areas, areas dependent on fishing, and areas suffering from natural or demographic handicaps). Simplification of the transfer and management mechanisms for the Structural Funds will moreover be the watchwords of the next reform.

See Agenda 2000; Treaties.

Economic and Social Committee *see* **European Economic and Social Committee (EESC).**

Economic policy

European Economic and Monetary Union (EMU) implies close coordination of national economic policies, which have thus become a matter of common

concern. In practical terms, the Council, acting by a qualified majority on a recommendation from the European Commission, formulates draft guidelines which are sent to the European Council. In the light of the conclusions of the European Council, the Council, again acting by qualified majority, adopts a recommendation setting out the Broad Economic Policy Guidelines (BEPG) of the Member States and the Community and informs the European Parliament (Article 99, TEC; new Article III-99). These annual broad guidelines are the central element of coordination for the European Union's economic policies. In addition to these broad guidelines, the EC Treaty lays down other economic policy provisions in Title VII, Articles 98 to 104, including:

- *multilateral surveillance*: the Member States, meeting within the Council, monitor economic developments and the application of the broad economic policy guidelines; they may issue recommendations to the government of a Member State that is failing to comply with the guidelines;
- *the excessive-deficit procedure*: the Member States must avoid excessive government deficits, and it is up to the Commission to ensure that this principle is complied with; Article 104 lays down the relevant procedure, conditions, exceptions and consequences, which may include fines;
- *financial assistance*: when a Member State is experiencing severe difficulties, the Council is able, under certain conditions, to grant it financial assistance;
- *prohibition against assuming the commitments of other Member States*: the Community or the Member States may not assume the commitments of other Member States;
- *prohibition of privileged access*: it is prohibited to grant public bodies, authorities or undertakings privileged access to finance.

Title VII of the EC Treaty also lays down the institutional provisions applicable to the European Central Bank (Articles 112 to 115) and the transitional provisions necessary for the implementation of the various stages of (Articles 116 to 124).

See **Economic and Monetary Union (EMU)**.

Economically active population

All persons of either sex who supply labour for the production of economic goods and services, as defined by the United Nations System of National Accounts during a specified time period.

Education

This is a primary government concern in all European countries, but the structures of education systems differ considerably, both within and between countries of

Glossary of labour law and industrial relations

the European Union (EU). It does not have a common education policy; on the contrary, its role is to create a system of genuine cooperation between the EU Member States by preserving the rights of each State in terms of the content and organization of its education and training systems. The EU provides:

- multinational education, training and youth partnerships;
- exchange schemes and opportunities to learn abroad;
- innovative teaching and learning projects;
- networks of academic and professional expertise;
- a framework to address across-the-board issues, such as new technologies in education and the international recognition of qualifications;
- a platform for dialogue and consultation with a view to comparisons, benchmarking and policy-making.

This European dimension supplements the action taken by the EU Member States. It concerns all areas of education – from individual school classes, teachers, parents and students to managers, university rectors, professional organisations, experts and government ministers – and training in all forms, at all ages. The challenge facing the European Commission and its Directorate-General for Education and Culture is to help preserve the best of the diversity of educational experience in Europe, while harnessing it to raise standards, remove obstacles to learning opportunities and meet the educational requirements of the twenty-first century.

See **Paid education leave; Professional training; Vocational training; Youth employment.**

Employer's obligation to inform employees of the conditions applicable to the employment contract or relationship

The EU Directive 91/533 EC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship aims to protect employees who are unaware of their rights by establishing at Community level the obligation for employers to inform employees in writing of their terms and conditions of employment. The Directive applies to all paid employees with a contract or employment relationship defined and/or governed by the law in force in a European Union Member State. Member States may exclude workers who have a contract or employment relationship:

- with a total duration not exceeding one month or with a working week not exceeding eight hours; or
- of a casual and/or specific nature where there are objective considerations justifying non-application of the Directive.

Employers must provide employees with the following basic information:

- identity of the parties;
- place of work;
- title, grade, nature or category of work or brief job specification;
- date of commencement of contract or employment relationship;
- in the case of a temporary contract or employment relationship, its expected duration;
- amount of paid leave or procedures for allocating and determining such leave;
- periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated, method for determining such periods of notice;
- basic amount, and other components of remuneration and frequency of payment;
- length of working day or week;
- any relevant collective agreements.

The information may be set out in a written contract of employment, in a letter of engagement or in one or more other written documents. These must be given to the employee within two months of commencement of employment, failing which the employee must be given a written declaration signed by the employer.

Employees required to work in another country must be in possession before departure of one of the documents referred to above, which must include the following additional information:

- duration of employment abroad;
- currency to be used for payment of remuneration;
- any benefits in cash or kind attendant in relation to expatriation;
- where appropriate, the conditions governing repatriation.

These provisions do not apply where the duration of employment abroad is less than one month. Any change to the terms of the contract or employment relationship must be recorded in writing. The Directive does not affect the Member States' prerogative to apply or introduce provisions that are more favourable to employees.

Employers' organization

An organization whose membership consists of individual employers, other associations of employers or both, formed primarily to protect and promote the

Glossary of labour law and industrial relations

collective interests of members, to present a united front in dealing with organizations and/or representatives of workers, as well as to negotiate for and provide services to members on labour-related matters.

Employment

This is one of the key concerns of the European Union (EU) Member States. Following on from the 1993 *White Paper on Growth, Competitiveness and Employment*, the Essen European Council (December 1994) identified five priority areas for action to promote employment:

- improving employment opportunities by promoting investment in vocational training;
- increasing the employment-intensiveness of growth;
- reducing non-wage labour costs;
- increasing the effectiveness of labour market policies;
- improving help for groups that are particularly hard hit by unemployment.

The Council and the European Commission presented a joint report on the action taken on these five priorities at the Dublin European Council (December 1996). Similarly, the Confidence Pact for Employment presented in June 1996 sought to mobilize all the actors concerned in a genuine employment strategy, make employment a matter of common interest at European level and incorporate the fight against unemployment into a medium and long-term vision of society. With the entry into force of the Treaty of Amsterdam in 1999, employment was enshrined as one of the European Community's objectives. The Community has been assigned the new responsibility of working towards a European strategy for employment together with the Member States. To this end, a new title on employment (Title VIII) has been written into the EC Treaty, under which:

- employment is to be taken into consideration in other Community policies;
- coordination mechanisms are to be established at Community level (adoption each year by the Council of guidelines on employment compatible with the broad economic policy guidelines, surveillance of their implementation in the Member States, creation of an employment committee);
- the possibility for the Council, acting by a qualified majority, to adopt incentive measures, including pilot projects and recommendations to Member States, in the light of its annual review of their employment policies.

An extraordinary summit on employment held in Luxembourg on 21 November 1997 agreed that the European Employment Strategy should focus on four themes: employability, entrepreneurship, adaptability and equal opportunities.

The Member States then decided to bring forward to 1998 the application of the provisions on coordinating their employment policies. At the Lisbon European Summit in March 2000, the heads of state and government reached agreement on a new strategic goal for the EU for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. To reach the EU target of full employment by 2010 set by the Lisbon European Council, the new communication on the future of the European Employment Strategy, published in January 2003, established several priorities: to reduce the unemployment rate; to encourage women to enter the labour market; to encourage people who have reached retirement age to stay in employment; to promote lifelong learning; to promote entrepreneurship; and to combat undeclared work.

See **Coordinated strategy for employment; Employment General Principles; Employment policy; Employment promotion and protection against employment; European Confidence Pact for Employment; European Employment Strategy.**

Employment and human resources development

An initiative with this name is based on the promotion of social solidarity across the entire European Union. The initiative groups four independent employment action programmes: Now (women), Horizon (disabled persons), Youthstart (young persons) and Integra (excluded persons).

- Now aims at ensuring equality between men and women in matters of employment, particularly through training measures and access to career employment.
- Horizon aims to facilitate the access of excluded groups of persons to employment, or persons at risk of being excluded, especially handicapped people and other risk groups.
- Youthstart aims to promote the integration in the employment market of young people under 20, notably those without qualifications or sufficient training.
- Integra aims to increase accessibility to employment markets, as well as the employability of excluded groups of people, particularly the long-term unemployed, travellers, prisoners and ex-prisoners, immigrants, refugees, etc.

See **Disability strategy of the European Union; Human resources development; Vocational training; Youth.**

Employment contract or relationship *see* **Employers' obligation to inform employees of the conditions applicable to the employment contract and relationship.**

Employment General Principles

The Employment General Principles are the focus of a title on employment inserted into the Treaty of Rome (Articles 125–130) by the Treaty of Amsterdam (1997). The promotion of employment now ranks as one of the EU's objectives and as a matter of common concern. European Union (EU) Member States are encouraged to coordinate their employment strategies in moves to combat high unemployment, although there are no plans for a common employment policy. However, under the terms of the Treaty, the European Council is to conduct an annual review of the state of employment, and the Council of the EU must play a more active role in employment affairs by encouraging the exchange of information in this field between EU Member States.

This objective was reinforced at the Luxembourg Jobs Summit, an extraordinary European Council meeting convened in November 1997, where it was decided to develop a strategy on employment built on thematic priorities – the European Employment Strategy (EES) – and described in employment guidelines adopted by the Essen Summit meeting of the European Council (1994). Every year these guidelines have to be translated into national action plans for employment by EU Member States, which are later assessed by the EU Council and the European Commission prior to the publication of a joint employment report. An Employment Committee was established to oversee the coordination of the employment strategies of the Member States. Made up of two representatives of each Member State and two representatives of the European Commission, the Committee's task is to assist the European Council with its responsibilities in these fields. It monitors Member States' employment and labour market policies, promotes their coordination and delivers opinions. In performing its remit it consults the social partners.

See **European Employment Strategy (EES).**

Employment policy

ILO Convention No. 122 (1964) aims to achieve full, productive and freely chosen employment. The Convention requires, as a major goal, the declaration and pursuit of an active policy designed to promote full employment with a view to stimulating economic growth and development, raising levels of living, meeting human resources requirements and overcoming unemployment and underemployment. The policy aims at ensuring that there is work for all who are available for and seeking it, that such work is as productive as possible and that there is freedom of choice of employment. Each worker shall have the fullest possible opportunity to qualify for, and use his/her skills and endowments in a job for which the worker is well suited, without discrimination.

Employment policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices. The measures to be adopted for attaining the specified objectives shall be decided and kept under review within the framework of a coordinated economic and social policy.

Finally, Convention No. 122 provides for consultation of representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers.

See other articles under “Employment”; Youth employment.

Employment promotion and protection against unemployment

ILO Convention No. 168 (1988) aims at taking appropriate steps in each ILO Member State to coordinate its system of protection against unemployment and its employment policy. To this end, the Member State shall seek to ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment. Each Member State shall also ensure equality of treatment for all persons protected, without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, nationality, ethnic or social origin, disability or age.

In addition, each Member State shall declare as a priority objective a policy designed to promote full, productive and freely chosen employment by all appropriate means, including social security. Such means should include, inter alia, employment services, vocational training and vocational guidance. In so doing it shall endeavour to establish special programmes to promote additional job opportunities and employment assistance, and to encourage freely chosen and productive employment for identified categories of disadvantaged persons having or liable to have difficulties in finding lasting employment such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers lawfully resident in the country and workers affected by structural change. This should be extended progressively to the promotion of productive employment for a greater number of categories than the number initially covered. As concerns the contingencies, they shall include:

- loss of earnings due to partial unemployment, defined as a temporary reduction in the normal or statutory hours of work; and
- suspension or reduction of earnings due to a temporary suspension of work, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature.

Glossary of labour law and industrial relations

Each ILO Member State shall in addition endeavour to provide the payment of benefits to part-time workers who are actually seeking full-time work. The total of benefits and earnings from their part-time work may be such as to maintain incentives to take up full-time work.

According to Convention No. 168, each Member State may determine the method or methods of protection by which it chooses to put into effect the provisions of the Convention, whether by a contributory or non-contributory system, or by a combination of such systems. Nevertheless, if the legislation of a Member State protects all residents whose resources, during the contingency, do not exceed prescribed limits, the protection afforded may be limited, in the light of the resources of the beneficiary and his/her family. Benefits provided in the form of periodical payments to the unemployed may be related to the methods of protection. In cases of full unemployment, benefits shall be provided in the form of periodical payments calculated in such a way as to provide the beneficiary with partial and transitional wage replacement and, at the same time, to avoid creating disincentives either to work or to employment creation. In cases of full unemployment and suspension of earnings due to a temporary suspension of work without any break in the employment relationship, when this contingency is covered, benefits shall be provided in the form of periodical payments, calculated as follows:

- where these benefits are based on the contributions of or on behalf of the person protected or on previous earnings, they shall be fixed at not less than 50 per cent of previous earnings, it being permitted to fix a maximum for the amount of the benefit or for the earnings to be taken into account, which may be related, for example, to the wage of a skilled manual employee or to the average wage of workers in the region concerned;
- where such benefits are not based on contributions or previous earnings, they shall be fixed at not less than 50 per cent of the statutory minimum wage or of the wage of an ordinary labourer, or at a level which provides the minimum essential for basic living expenses, whichever is the highest.

In the case where the legislation of a Member State makes the right to unemployment benefit conditional upon the completion of a qualifying period, this period shall not exceed the length deemed necessary to prevent abuse. Moreover, it shall endeavour to adapt the qualifying period to the occupational circumstances of seasonal workers. If the legislation of a Member State provides that the payment of benefit in cases of full unemployment should begin only after the expiry of a waiting period, such period shall not exceed seven days.

The benefits provided in cases of full unemployment and suspension of earnings due to a temporary suspension of work without any break in the

employment relationship shall be paid throughout these contingencies. Nevertheless, in the case of full unemployment:

- the initial duration of payment of the benefit provided for in Article 15 of the Convention may be limited to 26 weeks in each spell of unemployment, or to 39 weeks over any period of 24 months;
- in the event of unemployment continuing beyond this initial period of benefit, the duration of payment of benefit, which may be calculated in the light of the resources of the beneficiary and his/her family in accordance with the provisions of Article 16 of the Convention, may be limited to a prescribed period.

The benefit to which a protected person would have been entitled in the cases of full or partial unemployment or suspension of earnings due to a temporary suspension of work without any break in the employment relationship may be refused, withdrawn, suspended or reduced to the extent prescribed:

- for as long as the person concerned is absent from the territory of the Member State;
- when it has been determined by the competent authority that the person concerned had deliberately contributed to his/her own dismissal;
- when it has been determined by the competent authority that the person concerned has left employment voluntarily without just cause;
- during the period of a labour dispute, when the person concerned has stopped work to take part in a labour dispute or when he/she is prevented from working as a direct result of a stoppage of work due to this labour dispute;
- when the person concerned has attempted to obtain or has obtained benefits fraudulently;
- when the person concerned has failed without just cause to use the facilities available for placement, vocational guidance, training, retraining or redeployment in suitable work;
- as long as the person concerned is in receipt of another income maintenance benefit provided for in the legislation of the Member State concerned, except a family benefit, provided that the part of the benefit which is suspended does not exceed that other benefit.

When protected persons have received directly from their employer or from any other source under national laws or regulations or collective agreements, severance pay, the principal purpose of which is to contribute towards compensating them for the loss of earnings suffered in the event of full unemployment:

Glossary of labour law and industrial relations

- the unemployment benefit to which the persons concerned would be entitled may be suspended for a period corresponding to that during which the severance pay compensates for the loss of earnings suffered; or
- the severance pay may be reduced by an amount corresponding to the value converted into a lump sum of the unemployment benefit to which the persons concerned are entitled for a period corresponding to that during which the severance pay compensates for the loss of earnings suffered, as each Member State may decide.

There are special provisions for new applicants for employment. In this regard, Member States shall take account of the fact that there are many categories of persons seeking work who have never been, or have ceased to be, recognized as unemployed or have never been, or have ceased to be, covered by schemes for the protection of the unemployed. Consequently, at least three of the following ten categories of persons seeking work shall receive social benefits, in accordance with prescribed terms and conditions:

- young persons who have completed their vocational training;
- young persons who have completed their studies;
- young persons who have completed their compulsory military service;
- persons after a period devoted to bringing up a child or caring for someone who is sick, disabled or elderly;
- persons whose spouse has died, when they are not entitled to a survivor's benefit;
- divorced or separated persons;
- released prisoners;
- adults, including disabled persons, who have completed a period of training;
- migrant workers on return to their home country, except in so far as they have acquired rights under the legislation of the country where they last worked;
- previously self-employed persons.

See **Employment; Employment General Principles; Employment policy; Unemployment.**

Employment services

ILO Convention No. 88 (1948) aims at a free public employment service. The Member State shall create and maintain a free public employment service, which shall have the task of ensuring the best possible organization of the employment

market as an integral part of the national programme for the achievement and maintenance of full employment, and the development and use of productive resources. Detailed provisions of the Convention deal with the organization of the service and its cooperation with other bodies, with a view to providing efficient recruitment and placement. Convention No. 88 provides for the cooperation of employers' and workers' representatives in the running of the employment service, notably through consultative committees. It defines the functions of the employment service (placement, facilitating occupational and geographic mobility, employment market information, cooperation in the administration of unemployment insurance and other measures for the relief of the unemployed, etc.) and the measures to be taken by this service, taking account of the particular needs of certain categories of workers. Finally, it deals with the status and conditions of service of employment service staff (public officials enjoying guarantees of independence).

See Private employment agencies.

Enlargement and social policy in the European Union

Enlargement in the European Union (EU) offers the prospect of uniting the European continent on the basis of shared ideals and agreed common values. It will bring enhanced political stability and enhanced security, making it possible for countries to take full advantage of the internal market and to attract the foreign investment necessary to ensure innovation, employment and sustainable, long-term economic growth rates above the present EU level. But the benefits of EU membership go far beyond trade and investment. Implementation of a social policy based on the Union's values and accomplishments can also boost competitiveness. Social policy is not about spending and regulation, but is a productive factor that brings benefits for the economy, for employment and for competitiveness. The European social structures are rooted in the triple principles at the heart of the EU: competition between firms, solidarity between citizens, and partnership between the various actors in society to build a common vision of the future. They are based on shared values of equality and are distinguished by their universal nature and by the extent of their social support systems.

These characteristics mark out the EU in relation to most of the rest of the developed world. A strong commitment to full employment and social solidarity, a high level of social protection as a stabilizing force and productive factor, the protection of workers rights, the promotion of gender equality, the fight against discrimination and the importance accorded to an active dialogue between employers and employees are the cornerstones of a distinctly European social contract. But beyond that, Europe is part of a dynamic process. Therefore, it is not sufficient to build institutions to meet current minimum standards. They also have to be able to adapt and meet ever-changing circumstances to meet the challenges of the world economy.

Glossary of labour law and industrial relations

As is clear from the above, there is an important employment and social dimension to the enlargement process. The EU has developed binding rules on working conditions, equal opportunity, and health and safety in the workplace. Member States have stepped up their policy cooperation on employment and social protection. The European Social Fund supports the implementation of the European Employment Strategy in Member States. The EU attaches a high level of importance to the involvement of the social partners and representatives of civil society in the policy debate.

See **Enlargement of the European Union; European Employment Strategy (EES); European Social Fund (ESF).**

Enlargement of the European Union

This was originally the term used to refer to the four successive waves of new members joining the European Community. Nineteen countries have so far joined the six founder members – Belgium, France, Germany, Italy, Luxembourg and the Netherlands – at the following times:

1973: Denmark, Ireland and the United Kingdom;

1981: Greece;

1986: Portugal and Spain;

1995: Austria, Finland and Sweden;

2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

The current wave of accessions has turned enlargement into a unique opportunity to bring peace, stability and prosperity to the entire European continent. It is unprecedented in terms of its dimension and diversity. At the Copenhagen European Council (December 2002), the Commission concluded negotiations with the ten countries of Central and Eastern Europe and the two Mediterranean countries, enabling them to join the Union on 1 May 2004. As far as Bulgaria and Romania are concerned, the goal is to conclude negotiations in time for them to join in 2007. The possibility of opening negotiations with Turkey are to be examined in October 2005.

See **Accession negotiations of the European Union; Accession of new Member States to the European Union; Enlargement and social policy in the European Union.**

Enterprise policy in the European Union

The objective of enterprise policy in the European Union (EU) is to make it easier to create and develop enterprises or industries within the EU. The European Commission coordinates the initiatives of the Member States in this area while the Council, further to proposals from the European Commission and

after consultation with the European Parliament, decides unanimously on the measures designed to support the Member States' initiatives. Enterprise policy aims to allow enterprises (particularly small and medium-sized enterprises) to adapt to structural changes and expand. It also aims to stimulate cooperation between enterprises and to encourage them to make full use of the benefits of research, technological developments and innovation.

At the European Council in Lisbon in March 2000, the Heads of State and Government declared that the objective of the EU was to become the most competitive and dynamic knowledge-based economy in the world by 2010. Enterprise policy is helping to achieve this objective by fostering entrepreneurial spirit and innovation through the best possible use of the benefits conveyed by the internal market, by coordinating policies in the Member States through standardization or the exchange of best practices, and by developing electronic commerce.

Environment

The aim of the European Community's environment policy is to preserve, protect and improve the quality of the environment and to protect people's health. It also sets great store by the prudent and rational use of natural resources. Lastly, it seeks to promote measures at international level to deal with regional or worldwide environmental problems (Article 174, TEC; new Article III-129). Policy formulation is subject to different decision-making procedures depending on the area concerned. So, to attain the objectives listed, the Council:

- acts unanimously, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, where fiscal measures and provisions relating to town and country planning or land use (with the exception of waste management and general measures) are involved or where an EU Member State's choice in the matter of energy is significantly affected (Article 175.2, TEC);
- acts under the codecision procedure, after consulting the Economic and Social Committee and the Committee of the Regions, for the adoption of general action programmes setting out the priority objectives to be attained.

The Treaty of Amsterdam, which entered into force in 1999, has enshrined the concept of "sustainable development" as one of the EU's objectives, while environmental protection requirements have been given greater weight in other Community policies, especially in the context of the internal market (Articles 2 and 6 TEC; new Article III-4).

The provisions allowing a Member State to apply stricter rules than the harmonized rules have been made easier. These rules must be compatible with the Treaty and must be communicated to the European Commission. Environmental

policy is based on the precautionary principle, and on the principles that preventive action should be taken, that environmental damage should be rectified at source and that the polluter should pay.

See **Committee of the Regions; European Economic and Social Committee (EESC).**

EQUAL

A European Community (EC) initiative concerning transnational cooperation to promote new means of combating discrimination and inequalities in connection with the labour market. The increasing interdependence of the European Union (EU) Member States' economies led to a new employment chapter (Title VIII) being incorporated in the Treaty of Amsterdam, which entered into force in 1999. This provides for the development of a European employment strategy and annual adoption of guidelines (2001), which the Member States are asked to take into account in their national policies. The employment guidelines, which are transposed into national action plans (NAP) for each Member State, are based on four pillars: employability; entrepreneurship; adaptability; and equal opportunities.

The EU is also developing an integrated strategy to combat social exclusion and discrimination on grounds of sex or sexual orientation, race or ethnic origin, religion or beliefs, and disability or age. There are policies and programmes in this area, particularly under Articles 13 – new Article III-8, TEC (combating discrimination) and 137 – new Article III-104, TEC (promoting social integration). EQUAL also helps to implement this strategy, but is confined to action in the labour market. The European Commission would like to build on the experience gained with the ADAPT and EMPLOYMENT programmes implemented in the period 1994-99. For the period 2000-06, it is therefore including EQUAL in the four new Community initiatives, along with INTERREG III (strengthening cross-border cooperation to promote balanced development and European integration), LEADER (integrated territorial development strategies and support for cooperation between rural territories) and URBAN II (economic and social regeneration of troubled urban districts in the EU), as presented in Regulation No 1260/1999 laying down general provisions on the Structural Funds. (See Communication from the Commission to the Member States of 14.04.2000 establishing the guidelines for the Community initiative EQUAL.)

Partnerships are an essential component in implementing EQUAL. Development partnerships, which are the ultimate beneficiaries of financial aid, bring together all the parties that are interested and have something to contribute: public authorities at national, regional or local level; local authorities; public employment services; non-governmental organizations (NGOs); enterprises, and especially small and medium-sized enterprises (SMEs); and the social partners. All these players cooperate to draw up a strategy for action,

define and decide upon joint aims (empowerment principle) and seek innovative ways of combating inequality and discrimination. The EU Member States define which of the following two types of partnership caters best for national circumstances: (a) geographic development partnerships, which bring together players in a specific geographical area; and (b) sectoral development partnerships, which cover a particular economical industrial sector and may also be geared to a specific target group. As the European Social Fund (ESF) is the only Community fund supporting development partnerships, action eligible under other Structural Funds – Employment Regional Development Fund (ERDF), “guidance” section of the European Agricultural Guidance and Guarantee Funds (EAGGF), Financial Instruments for Fisheries Guidance (FIFG) – may attract subsidies as long as they comply with the provisions of the Treaty, especially those concerning state aid.

EQUAL round 2, which involves each EU Member States’ selecting its own Development Partnerships, started in autumn 2004 and will be extended progressively to all Member States. The launch date for the transnational cooperation search is set for 1 January 2005.

The EU Member States base their EQUAL strategy on specific thematic areas under the four pillars of the employment guidelines. These can be reviewed every two years in the light of developments in the labour market and are as follows:

Pillar 1: Employability

- (a) To ease access to the labour market for those who are having problems entering and returning to the labour market.
- (b) To combat racism and xenophobia at work.

Pillar 2: Entrepreneurship

- (c) To make it possible for anyone to start up a business by providing the tools necessary to do so, and to identify new opportunities for employment in urban and rural areas.
- (d) To enhance the social economy (third sector), especially services of public interest, by concentrating on improving job quality.

Pillar 3: Adaptability

- (e) To promote lifelong learning and inclusive practices encouraging recruitment and stable employment for those suffering from discrimination or unequal treatment at work.
- (f) To foster the ability in enterprises and amongst workers to adapt to economic change and the use of new information technologies.

Glossary of labour law and industrial relations

Pillar 4: Equal opportunities for men and women

- (g) To reconcile family and working life, and boost employment amongst women and men who have left work by developing more effective and flexible forms of organization of work and personal services.
- (h) To reduce the gender pay gap and combat job segregation.

See ADAPT; European Regional Development Fund (ERDF); European Social Fund (ESF); other entries under “Equal” and “Equality”.

Equal opportunities

According to European treaties, two key elements of the general principle of equal opportunities are the ban on discrimination on grounds of nationality (Article 12, TEC; and equal pay for men and women (Article 141, TEC; new Article III-108). They are intended to apply to all fields, particularly economic, social, cultural and family life. The Treaty of Amsterdam, which entered into force in 1999, added a new Article 13 (new Article III-8) to the Treaty, reinforcing the principle of non-discrimination, which is closely linked to equal opportunities. Under this new Article, the Council has the power to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Adopted in December 2000, the Charter of Fundamental Rights of the European Union includes a chapter entitled “Equality”, which sets out the principles of non-discrimination, equality between men and women, and cultural, religious and linguistic diversity. It also covers the rights of the child, the elderly and persons with disabilities. On the subject of non-discrimination, Article 21 of the Charter states that: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” Equal opportunities are the responsibility of a unit within the Directorate-General for Employment and Social Affairs of the European Commission. Sometimes also known as Action on Employment and Equality for Women, the unit is charged with developing and implementing European Communities policy on women’s rights, and also has a duty to ensure that gender equality is taken into account in other policy areas.

See Charter of Fundamental Rights of the European Union; Charter of Fundamental Social Rights of Workers; Citizens’ Rights; Equal pay; Equal treatment; Equal treatment for men and women.

Equal pay

Equal pay policy was laid down in Article 119 of the Treaty of Rome, 1957 (now Article 141 of the Treaty of Amsterdam, 1999). While it refers specifically to

gender discrimination, obliging the Member States to “ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work”, the Article has been taken to refer to equality in general. A series of directives between 1975 and 1986 extended the meaning of equal pay for equal work, as well as enabling those who consider themselves to be discriminated against to take their case, without fear of dismissal or reprisal, to a national tribunal. Where there is a difference of opinion over the meaning of European Communities law, the question may be referred to the European Court of Justice, whose rulings are binding on all national bodies.

See Equal remuneration; Equitable wages.

Equal pay for work of equal value

According to European Treaties, the principle of remuneration without discrimination on grounds of sex or marital status with regard to all aspects of pay and conditions (Article 141 TEC; new Article III-108).

See Equal pay.

Equal remuneration

ILO Convention No. 100 (1951) aims to provide equal remuneration for men and women for work of equal value. ILO Member States having ratified the Convention shall promote and, in so far as is consistent with the methods in operation for determining rates of remuneration, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. Convention No. 100 shall apply to basic wages or salaries and to any additional emoluments whatsoever, payable directly or indirectly, in cash or in kind, by the employer to the worker and arising out of his/her employment. The Convention defines equal remuneration for work of equal value as remuneration established without discrimination based on sex. This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. One of the means specified for assisting in giving effect to the Convention is the objective appraisal of jobs on the basis of the work to be performed. The Convention provides that governments shall cooperate with employers' and workers' organizations for the purpose of giving effect to its provisions.

See Equal pay; Equitable wages.

Equal treatment

In European Union (EU) labour law, the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly, in particular by reference to marital or family status. EU Member States have the right to exclude from the field of application of the principle of

Glossary of labour law and industrial relations

equal treatment those occupational activities (and where appropriate the training leading thereto) for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor. However, such exclusion should not be of any prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity, and to measures to promote equal opportunity for men and women, in particular by removing existing inequalities that affect women's opportunities in the areas of access to employment, including promotion, and to vocational training, and as regards working conditions and social security. Concerning the application of the principle of equal treatment, EU Member States shall take necessary measures to ensure that:

- any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;
- any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions shall be or may be declared null and void, or may be amended;
- those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; where similar provisions are included in collective agreements, labour and management shall be required to undertake the desired revision.

See Equal opportunities; Equal treatment for men and women; other articles under "Equal" and "Equality".

Equal treatment for men and women

Article 141, TEC (former Article 119) of the Treaty establishing the European Community (EC) lays down the principle that men and women should receive equal pay for equal work. Since 1975, a series of directives have broadened the principle to cover access to employment, training and career progression, the aim being to eliminate all forms of discrimination at work. Equal treatment was later extended to social security, statutory schemes and occupational schemes. In the 1980s, recognition of this principle led to the promotion of equal opportunities via multi-annual programmes.

The Treaty of Amsterdam, which entered into force in 1999, seeks to supplement Article 141 (which is rather limited in scope, covering only equal pay) by including the promotion of equality between men and women as one of the tasks of the EC set out in Article 2, TEC. The Treaty explicitly provides that in all its activities the EC must aim to eliminate inequalities, and to promote equality, between men and women (Article 3.2, TEC). The new Article 141, TEC, lends

greater support to equal treatment of men and women and to equal opportunities, whereas Article 119, as it was, was confined to issues of equal pay for the two sexes for the same work. The new provisions allow the European Council, after consulting the Economic and Social Committee and in accordance with the co-decision procedure, to take active measures to ensure that the principle of equal treatment is applied. Moreover, Member States may maintain or adopt measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity, or to prevent or compensate for disadvantages in professional careers. Such measures may not take the form of strict quotas, which were rejected by the European Court of Justice in its ruling in *Kalanke* in 1995 (the issue arose again in 1997 in the *Marshall* case).

The Charter of Fundamental Rights of the European Union, adopted in December 2000, includes a chapter entitled “Equality”, which sets out the principles of equality between men and women. Article 23 states that: “Equality between men and women must be ensured in all areas, including employment, work and pay.” In June 2000, the European Commission also adopted a Communication entitled *Towards a Community Framework Strategy on Gender Equality* (2001–05). Its purpose is to establish a framework for action within which all EC activities can contribute to attaining the goal of eliminating inequalities and promoting equality between women and men.

See **Equal opportunities**; **Equal treatment**; *other entries under “Equal” and “Equality”*.

Equal treatment in employment and occupation

EU Directive 2000/78 EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, puts in place a general framework to ensure equal treatment of individuals in the European Union (EU), regardless of their religion or belief, disability, age or sexual orientation, as regards access to employment or occupation and membership of certain organizations. This Directive is part of a package of measures to combat discrimination. The package also includes a Communication from the European Commission presenting the general framework of action, a proposal for a Directive implementing the principle of equal treatment regardless of race or ethnic origin, and an Action Programme to combat discrimination (2001–06.) The EU Member States ban discrimination in the field of employment and occupation. However, the scope of this prohibition, its content and enforceability vary from country to country. Hence this Directive is designed to lay down a general minimum framework in this area.

Directive 2000/78 EC concerns the following areas:

- conditions of access to employed or self-employed activities, including promotion;
- vocational training;

Glossary of labour law and industrial relations

- employment and working conditions (including pay and dismissals);
- membership of and involvement in an organization of employers or workers or any, other organization whose members carry on a particular profession.

This applies as much to the public sector as to the private sector, including public bodies, as well as for paid and unpaid work. It does not cover discrimination based on sex because this principle has already been addressed in Community legislation (notably in Directive 76/207 EEC on equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions and Directive 86/613 EEC on equal treatment between men and women engaged in an activity, including agriculture in a self-employed capacity).

The Directive aims to combat both direct discrimination (differential treatment based on a specific characteristic) and indirect discrimination (any provision, criterion or practice that is neutral on the face of it but is liable to adversely affect one or more specific individuals or incite discrimination). Harassment, which creates a hostile environment, is deemed to be discrimination. Reasonable arrangements must be made to guarantee the principle of equal treatment for disabled persons, limiting it to cases that do not involve unjustified difficulties. In certain cases, differences in treatment may be justified by the nature of the post or the conditions in which the job is performed. Differences in treatment on grounds of age are permissible when they are objectively and reasonably justified by a legitimate labour market aim and are appropriate and necessary to the achievement of that aim (protection of young people and older workers, requirements as to the extent of job experience, etc.).

EU Member States have the right to maintain and adopt measures intended to prevent or compensate for existing inequalities (measures to promote the integration of young people, the transition from work to retirement, etc.). The Directive contains a “non-regression” clause, which concerns EU Member States whose legislation provides for a higher level of protection than that afforded by the Directive. Despite affirmation of the principle of equal treatment between men and women by Community law, enforcement of this principle has proved extremely difficult in practice. For this reason the proposal includes a series of mechanisms to ensure effective remedies in the event of discrimination. These mechanisms rely on:

- improvement of legal protection by reinforcing access to justice or to conciliation procedures (both in the form of individual access and by empowering organizations to exercise this right on behalf of a victim);
- shifting the burden of proof: once facts have been established from which it may be presumed that there has been discrimination, the burden of proof lies with the defendant, in compliance with Directive 97/80 EC and the case law of the Court of Justice in the case of sex discrimination;

- protection of victims of discrimination against reprisals, and notably dismissal;
- dissemination of adequate information on the Directive's provisions (once adopted) to vocational training and educational bodies and within the workplace.

The social partners have a crucial role to play in combating discrimination. Hence EU Member States must take adequate measures to promote social dialogue between the two sides of industry with a view to fostering the principle of equal treatment, through the monitoring of workplace practices, codes of conduct, exchange of experiences and good practices. Discriminatory national provisions must be abolished or declared null and void. Sanctions will be imposed by Member States in the event of infringement of the principle of equal treatment. Directive 2000/78 EC includes an impact assessment form in respect of companies, and in particular small and medium-sized enterprises.

*See **Burden of proof in cases of discrimination based on sex; Disability strategy of the European Union; Discrimination; Discrimination (employment and occupation).***

Equal treatment on grounds of racial and ethnic origin

EU Directive 2000/43 EC of 29 June 2000 aims to implement the principle of equal treatment on grounds of racial and ethnic origin in the European Union (EU). Article 13 of the EC Treaty, which was added by the Treaty of Amsterdam, provides the EU with a legal basis to combat all forms of discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Directive aims to fight discrimination on grounds of race or ethnic origin by reinforcing existing national provisions in this area, notably by means of a common definition of unlawful discrimination. From the point of view of enlargement, the Directive will help to ensure that human rights are observed. Moreover, by discouraging discrimination, it should allow increased participation in economic and social life and a reduction in social exclusion. All forms of discrimination on grounds of race or ethnic origin are prohibited. This discrimination may be in the form of less favourable treatment of the person concerned or a provision, criterion or practice which appears to be neutral but is likely to have an unfavourable outcome for a person or a specific group of persons. Harassment creates a hostile environment and is to be deemed to constitute discrimination.

It is to be noted that difference of treatment on grounds of nationality does not fall within the scope of Directive 2000/43 EC. Equal treatment must be guaranteed in terms of access to employment or self-employment, training, education, working conditions, involvement in a professional organization, social protection and social security, social advantages, and access to and the supply of goods and services. The only possible exception is where race or ethnic origin

constitutes a fundamental professional requirement (artistic performances, social services for people from a specific ethnic group, etc.). The Directive does not prevent EU Member States from taking positive measures in relation to a specific group. Similarly, Member States may apply provisions that are more favourable than those defined in the Directive.

Legal and/or administrative procedures to enforce the ban on discrimination are available to everyone. A procedure of this kind may be instituted on behalf of an individual by an association, organization or other legal person. In general, where it may be presumed from the facts that discrimination has taken place, the burden of proof falls to the defendant, who must prove that the principle of equal treatment has not been infringed.

Each EU Member State adopts measures to protect the complainant against retaliation. The social dialogue between the two sides of industry has made it possible to organize the monitoring of workplace practices. It is also possible to draw up different texts (codes of conduct) and agreements (collective agreements) to promote equal treatment. Exchange of best practice is also encouraged. The Member States are responsible for disseminating information on equal treatment and giving one or more independent bodies the task of promoting this principle. These bodies can receive complaints from victims of discrimination, start investigations or studies and issue recommendations concerning the type of discrimination defined by the Directive. Discriminatory national provisions must be abolished or declared null and void. Member States shall provide for sanctions in the event of the principle of equal treatment being infringed.

See **EQUAL; European Monitoring Centre on Racism and Xenophobia (EUMC); Racism.**

Equality between men and women: Access to employment, vocational training and promotion

Within the European Union (EU), one of the most important instruments is Directive 2002/73 EC of the European Parliament and the Council of 23 September 2002 amending Directive 76/207 EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This Directive consolidates the progress that has been made by the case law of the European Court of Justice, notably by the definition of discrimination, harassment and any behaviour consisting in obliging anyone to practise discrimination based on sex. One of its contributions in relation to earlier case law consists of the requirement of setting up an independent body to combat other discrimination, following the example of what is done in the context of other discrimination by Directives 2000/43 EC and 2000/78 EC. There were three misgivings regarding the content of Directive 2002/73 EC.

First, the notion of indirect discrimination departs from the definition given in Directive 97/80 EC of 15 December 1997 on the burden of proof in cases of

discrimination based on sex. Whereas the latter Directive stipulated that “indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex”, Directive 2002/73 EC defines indirect discrimination – in line with Directives 2000/43 EC and 2000/78 EC – as a situation “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary”. The disproportionate impact of an apparently neutral measure therefore no longer suffices to describe it as indirectly discriminatory. Consequently, the scope of protection against discrimination is restricted.

Second, although point 14 of the Preamble of the Directive reads, “Member States may, under Article 141.4, TEC, maintain or adopt measures providing for specific advantages, in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Given the current situation, and bearing in mind Declaration No. 28 to the Amsterdam Treaty, Member States should, in the first instance, aim at improving the situation of women in working life”, the appropriateness of adopting measures of positive action is left to the discretion of the EU Member States. Taking into account the contrasting attitudes adopted on this issue by the States in the north and those in the south, we may regret the absence of harmonization in this area.

Third, although according to the new Article 6.2 of Directive 76/207 EEC, the EU Member States must introduce into their national legal systems “such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination contrary to Article 3, in a way which is dissuasive and proportionate to the damage suffered”, the nature and importance of the sanctions is essentially left to the discretion of each EU Member State. This may result in a significant variation between Member States.

See Equal treatment; Equal treatment in employment and occupation; Equal treatment for men and women.

Equality between men and women: Burden of proof *see* **Burden of proof in cases of discrimination based on sex.**

Equality between men and women: Equal pay

EU Directive 75/117 EEC of 10 February 1975 on the approximation of the laws of the European Union (EU) Member States relating to the application of the principle of equal pay for men and women will reinforce the basic laws with

Glossary of labour law and industrial relations

standards aimed at facilitating the practical application of the principle of equality to enable all employees in the European Community to be protected, as there are still disparities between Member States, despite efforts to date. The principle of equal pay entails, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. Where a job classification system is used for determining pay, it must be based on the same criteria for both men and women. Employees wronged by failure to apply this principle must have the right of recourse to judicial process to pursue their claims.

EU Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions that do not comply with the principle. They shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment that are contrary to the equal pay principle may be declared null and void. They shall ensure that the equal pay principle is applied and that effective means are available to guarantee that it is observed.

Employees shall be protected against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the equal pay principle. The provisions adopted pursuant to Directive 75/117 EEC and relevant existing legislation shall be brought to the attention of employees. Member States shall forward all necessary information to the European Commission by the deadline specified, to enable it to draw up a report on the application of the Directive.

*See **Equal pay; Equal remuneration; Equitable wages.***

Equality between men and women: Occupational social security schemes

EU Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, amended by Council Directive 96/97/EC of 20 December 1996, aims to define the meaning of Article 119 of the EC Treaty (new Article 141), and the scope and ways of applying the principle of equal treatment for men and women in occupational social security schemes. Directive 86/378 EEC applies to the working population, including self-employed workers, workers whose activity is interrupted (by illness, maternity, accident or involuntary unemployment), persons seeking employment, and retired and disabled workers and those claiming under them. The Directive applies to occupational schemes providing protection against the risks of sickness, invalidity, old age, industrial accidents, occupational diseases and unemployment, including occupational schemes that provide for other social benefits, such as survivors' benefit and family allowances if intended for employed persons.

The principle of equal treatment implies that there shall be no discrimination based on sex, in particular in respect of:

- the scope of the schemes and the conditions of access to them;
- the obligation to pay contributions and the calculation of the contributions;
- the calculation of benefits and the conditions governing the duration and retention of entitlement to benefits.

The principle of equal treatment does not prejudice the provisions for the protection of women in respect of maternity. As a guide, Directive 86/378/EEC lists ten provisions based on sex (e.g. definitions of persons who may participate in an occupational scheme, different retirement ages, or different contributions for workers) regarded as contrary to the principle of equal treatment. Provisions contrary to this principle that figure in legally compulsory collective agreements, staff rules of undertakings or any other arrangements must be declared null and void or amended.

Any provisions of occupational schemes for employed workers contrary to the principle of equal treatment were to be revised with retroactive effect from 17 May 1990, except in the case of workers or those claiming under them who had, before that date, initiated legal proceedings or raised an equivalent claim under national law in order to benefit from equal treatment for men and women in accordance with Article 119 of the EC Treaty (new Article 141), as interpreted by the Court of Justice in the Barber judgement and subsequent related judgements. Any provisions of occupational schemes for self-employed workers contrary to the principle of equal treatment were to be revised by 1 January 1993 at the latest.

With regard to schemes for self-employed workers, the EU Member States may defer compulsory application of the principle with regard to determining pensionable age for old-age and retirement pensions, to survivor's pensions or to the setting of different levels of worker contribution, until the date provided for in the Directive at the latest.

A provision enabling men and women to benefit from a flexible retirement age system is not incompatible with the Directive. Any person who is injured by failure to apply the principle must be able to pursue his/her claim before the courts. Workers are protected against dismissal constituting a response on the part of the employer to a complaint lodged or a legal action brought to enforce compliance within the principle of equal treatment.

See Equality for men and women: Social Security; Equality of treatment (social security); Social security (minimum standards).

Equality between men and women: Parental leave *see* Parental leave.

Equality between men and women: Self-employed activity

EU Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity,

including agriculture, in a self-employed capacity and in the protection of self-employed women during pregnancy and motherhood, pursues the implementation of the principle of equal treatment for persons engaged in an activity in a self-employed capacity and spouses participating in this activity to protect pregnant women and women who have recently given birth engaged in such activities. The Directive covers the “self-employed workers”: all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including farmers and members of the liberal professions. The Directive also covers their spouses, who are not employees or partners, but who habitually participate in the activities of the self-employed worker. The principle of equal treatment implies the absence of all discrimination on the grounds of sex. All provisions contrary to the principle of equal treatment, in particular in respect of the establishment or extension of a business or of any other form of self-employed activity, shall be eliminated by the European Union (EU) Member States. The conditions for the formation of a company between spouses may not be more restrictive than the conditions for the formation of a company between unmarried persons.

Where contributory social security systems for self-employed persons exist in an EU Member State, spouses who are not protected under the self-employed workers’ social security scheme must be able to join a contributory social security scheme voluntarily. The Member States undertake to examine any appropriate steps for encouraging the recognition of the work of the spouses. The Member States undertake to examine under what conditions female self-employed workers and the wives of self-employed workers may have access to services supplying temporary replacements for existing national social services or be entitled to cash benefits (under a social security scheme or public social protection system) during interruptions in their occupational activity owing to pregnancy or motherhood.

All persons who consider themselves wronged by failure to apply the principle of equal treatment in self-employed activities must be able to pursue their claims by judicial process. The measures adopted pursuant to Directive 86/613 EEC and the relevant provisions already in force are brought to the attention of the bodies representing self-employed workers and vocational training centres.

Equality for men and women: Gender Programme *see* **Gender mainstreaming (EU); other entries under “Gender”.**

Equality for men and women: Social security

EU Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security implements the principle of equal treatment in statutory social security schemes offering protection against the risks of sickness, invalidity, old

age, accidents at work and occupational diseases, and unemployment and social assistance. The Directive applies to the working population, including workers whose activity is interrupted (by illness, accident or unemployment), persons seeking employment, retired or invalided workers, and self-employed persons. It does not apply to provisions concerning survivors' benefits and family benefits.

The principle of equal treatment means that there should be no discrimination on grounds of sex, in particular as concerns:

- the scope of the schemes and the conditions of access to them;
- the obligation to contribute and the calculation of contributions;
- the calculation of benefits and the conditions governing the duration and retention of entitlement to benefit.

The principle of equal treatment is without prejudice to the provisions relating to the protection of women on the grounds of maternity. Any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. Any persons who are the victims of the failure to apply the principle of equal treatment must be able to pursue their claims by judicial process.

The EU Member States may exclude from the scope of Directive 79/7/EC:

- the determination of pensionable age (old-age and retirement pensions);
- advantages granted to persons who have brought up children (old-age insurance, acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children);
- the granting of old-age or invalidity benefit entitlement by virtue of the derived entitlements of a spouse;
- the granting of increases of long-term invalidity, old age, accidents at work and occupational disease benefits for a dependent spouse;
- the consequences of the exercise, before the adoption of the Directive, of a right of option not to acquire rights or incur obligations under a statutory scheme.

The Member States periodically examine whether it is justified to maintain the exclusions in the light of social developments.

See **Equality of treatment (social security); Social security (minimum standards).**

Equality of treatment (social security)

ILO Convention No. 118 (1962) aims to ensure, within the territory of any ratifying ILO Member State, equality of treatment in respect of social security for refugees, stateless persons and nationals of another Member State. Ratifying

Glossary of labour law and industrial relations

States undertake to grant to nationals of any other State for which the Convention is also in force, and to refugees and stateless persons, equality of treatment with their own nationals in respect of social security. Such equality of treatment applies to coverage and the right to benefits. It may be granted in respect of every branch of social security for which the ratifying State has accepted the obligations of Convention No. 118.

Equality of treatment shall be accorded without any condition of residence. The obligations of the Convention may be accepted in respect of one or more of the following social security branches for which the ratifying State has in effective operation legislation covering its own nationals within its own territory: medical care; sickness benefit; maternity benefit; invalidity benefit; old-age benefit; survivors' benefit; employment injury benefit; unemployment benefit; and family benefit. The Convention does not apply to special schemes for civil servants, or for war victims or public assistance. It provides that certain benefits (invalidity, old age, survivors, death grants, employment injury pensions) shall be guaranteed, even when they are resident abroad, to the nationals of the ratifying State, as well as to nationals of other States that have accepted the obligations of the Convention for the corresponding branch. Family allowances shall be guaranteed, both to nationals of the State and to nationals of any other State that has accepted the obligations of the Convention for the same branch, in respect of children resident within the territory of one of these States. The Convention provides that States that have ratified it shall endeavour to participate in schemes for the maintenance of acquired rights and rights in the course of acquisition.

See **Non-discrimination principle; Social security (and free movement of workers); Social security (minimum standards).**

Equitable wages

The aim of providing all employees with an equitable wage was enshrined in the Charter of Fundamental Rights of Workers (Social Charter), adopted in 1989 by 11 European Community Member States (with the exception of the United Kingdom, which signed in 1997). In accordance with the 1989 Social Action Programme, the European Commission in 1993 published an Opinion stating that the pursuit of an equitable wage must be seen as part of achieving higher productivity and employment creation, and to foster good relations between the two sides of industry. The Member States were encouraged to work towards an equitable wages policy, to be achieved through greater labour market transparency. The 1993 Opinion included the Commission's pledge to conduct further research. Findings show that most Member States have the basic legislative framework in place for achieving an equitable wage. Direct intervention in wage policy is, however, regarded as undesirable by the majority of the Member States' governments.

See **Community Charter of the Fundamental Rights of Workers (Social Charter); Equal pay; Equal remuneration.**

EURES (European Employment Services)

This was established in 1994 as the successor to SEDOC (European System for the International Clearing of Vacancies and Applications for Employment), an agency established by the European Commission to operate a scheme that would permit European Union Member States to exchange information on job opportunities for migrant workers. EURES brings together the European Commission and the public employment services of the countries of the European Economic Area and Switzerland. Other regional and national bodies concerned with employment issues, such as trade unions and employers' organizations, are also included.

The EURES network provides services for workers and employers, as well as citizens wishing to benefit from the free movement of persons. The service provision includes information, advice and recruitment/placing. EURES is playing an increasing role in identifying human resource surpluses and deficits in the different economic sectors, and also helps improve employability, especially of young people. It plays a particularly important role in cross-border regions.

See **Education; Lifelong learning; Migration for employment; Employment services.**

European Agency for Health and Safety at Work

The Agency aims to make Europe's workplaces safer, healthier and more productive, with an emphasis on prevention. The Agency (based in Bilbao, Spain) acts as a catalyst for developing, collecting, analysing and disseminating information on occupational safety and health. As a tripartite European Union (EU) organization, it brings together representatives of governments, employers and workers' organizations from the EU Member States. Its network also includes EFTA and EU candidate countries, as well as Australia, Canada and the United States.

The enlargement of the Agency's network through the inclusion of the ten new Member States will result in an increased focus on topics of particular importance for these countries (construction, agriculture, noise at work). The Agency continues to develop in line with the priorities set out in the Community Strategy for Health and Safety and is in the process of establishing a new Risk Observatory. The Agency also acts as an interchange on safety and health matters with developing countries and international organizations (World Health Organisation (WHO), International Labour Organization (ILO) and Pan American Health Organisation (PAHO)).

The Agency is headed by a Director appointed by the Administrative Board (See Council Regulation 2062/94 of 18 July 1994 establishing a European Agency

for Health and Safety at Work. Amended by Council Regulation 1643/95, of 29 June 1995 and Council Regulation 1654/2003 of 18 June 2003.)

See **Health and safety at work; Health, hygiene and safety at work.**

European Centre for the Development of Vocational Training (CEDEFOP)

The CEDEFOP is a Community organization aimed at promoting the development of vocational education and training in the European Union (EU). Established in 1975 by the Council of Ministers of the EC, CEDEFOP works to promote a European area of lifelong learning throughout an enlarged EU. Three main areas of activity have been assigned to the Centre:

- *training information*: the documentation base and the database of CEDEFOP are increased every year by a network of national correspondents, and are open to the general public. Numerous publications are developed by the Centre;
- *research*: CEDEFOP develops new knowledge in order to achieve novel training initiatives across Europe. In this sense, it functions as an innovation pole;
- *coordination*: CEDEFOP has the goal of fostering a coordinated approach in the field of training. Many initiatives are taken in order to meet as many players in the sector as possible.

CEDEFOP's European training village (ETV), established in 1998, is an interactive platform bringing together policy makers and all those with an interest in vocational education and training.

CEDEFOP's medium-term priorities for 2003–06 are improving access to learning, mobility and social inclusion, enabling and valuing learning, and supporting networks and partnerships in an enlarged EU. The CEDEFOP board is composed of three delegates of the European Commission, 15 delegates representing trade unions, 15 delegates representing employers' organizations, and 15 delegates of the Member States. The seat of the Centre is in Thessaloniki (Greece).

See **Lifelong learning; Professional training; Vocational training.**

European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)

CEEP is the European association representing enterprises and employers' organizations with public participation and enterprises carrying out activities of general economic interest, whatever their legal ownership or status. It is one of the three social partners recognized by the European Union (EU) Commission and represents the public sector employers in the European Social Dialogue. It was created in 1961. At present CEEP has several hundred member associations, enterprises and organizations in over 20 countries. CEEP's territory is not limited.

While its full members belong to the EU Member States or to the European Free Trade Association (EFTA), enterprises from non-EU countries can also join as associated members. CEEP can also admit other bodies of various kinds that identify with its objectives, as well as individual members on a personal basis. It has its General Secretariat in Brussels, and National Sections in each country.

See Social dialogue (EU).

European Commission

The European Commission is a body with powers of initiative, implementation, management and control. It is the guardian of the European Treaties and the embodiment of the European Community. With enlargement, it has been decided that from 1 November 2009 onwards the Commission is to be restricted to 15 members: the President of the Commission, the Minister of Foreign Affairs (nominated as Vice-President) and 13 European Commissioners with voting rights. Apart from these 13 Commissioners, other Commissioners without voting rights will be appointed. Each European Union (EU) Member State will be represented by a national who will either be a European Commissioner (limited to 13 posts) or a Commissioner without voting rights. The Commission will continue to have the right of initiative (in particular as regards annual and multiannual programming), overseeing the application of Community law, execution of the budget, management of programmes, and external representation of the EU, except in the case of the common foreign and security policy. The Commission is responsible and accountable to the European Parliament.

See European Parliament.

European Communities

This originated in three bodies:

- the European Coal and Steel Community (ECSC), established by the Treaty of Paris (1952);
- the European Economic Community (EEC), established by treaty in 1958 and known informally as the Common Market. The EEC was the most significant of the three treaty organizations that were consolidated in 1967 to form the European Community (EC), known since the ratification of the Maastricht Treaty (1993) as the European Union (EU);
- the European Community for Atomic Energy (Euratom), established by the Treaty of Rome (1958). It is administered by the European Commission.

These three communities have been revised by the Treaty of Maastricht (1992), which renamed the EEC the European Community (EC). There is a common structure of the three communities, created through the establishment

Glossary of labour law and industrial relations

of the European Union (EU). This common "roof" adds two new "pillars" to the European house – the second pillar of Foreign Affairs and Security Policy, and a third pillar of Justice and Home Affairs. These two pillars, together with the Communities, represent the ensemble of the EU.

See Treaties.

European Company *see Statute for a European Company.*

European Constitution

The Treaty establishing a Constitution for Europe was approved at the European Council in Brussels in June 2004, and was signed in Rome on 29 October 2004. The main objectives of the Constitution are to simplify the overlapping series of treaties and protocols providing the current legal Constitution for Europe, and to enhance and streamline decision-making in the European Union (EU). The Constitution is based on the EU's two primary existing Treaties: the Treaty of Rome (1957) and the Maastricht Treaty (1992), as modified by the treaties of Amsterdam and Nice.

Before entering into force, the Constitution must be ratified by each Member State. This is likely to take around two years. Ratification takes different forms in each country, depending on the traditions, constitutions and political processes of the country in question. In the event that 80 per cent of the EU Member States have ratified the treaty after two years (i.e. by October 2006), while one or more Member States have "encountered difficulties in proceeding with ratification", the European Council has agreed to reconvene and consider the situation. Although the agreement does not specify what would happen, it remains clear that the Treaty cannot enter into force without being ratified by all parties to it.

The Constitution consists of eight parts. No article in the Constitution is entirely new. Each article is based on a provision from the existing treaties (revised to a greater or lesser extent, or taken verbatim), or on a provision of the existing Charter of Fundamental Rights of the European Union.

See Convention on the Future of Europe; Laeken Declaration.

European Convention

At the Nice European Council in December 2000, a declaration on the future of the European Union (EU), the Nice Declaration, was adopted. The aim of this Declaration was to pursue institutional reform beyond the results of the 2000 Intergovernmental Conference (IGC 2000). It set out three steps for this reform: the launch of a debate on the future of the European Union; a Convention on institutional reform, the implementation of which was agreed by the Laeken European Council in December 2001; and finally the convening of an IGC in 2004. According to the Laeken Declaration, the aim of this Convention

is to examine four key questions on the future of the EU: the division of powers; the simplification of the treaties; the role of the national parliaments; and the status of the Charter of Fundamental Rights of the European Union (2000).

The inaugural meeting of the Convention was held on 28 February 2002, and, according to the Laeken Declaration, should have come to an end by March 2003. Three phases were envisaged: listening, deliberating and proposing. At the end of the last phase, a single constitutional text was drafted. This document served as the starting point for the IGC negotiations conducted by the EU Heads of State and Government, who are ultimately responsible for any decision on amendments to the treaties. The plan is for this constitutional draft to be presented at the latest in June 2003 at the Thessaloniki European Council. The work was completed in July 2003, resulting in the Rome Declaration of 18 July 2003, with Valéry Giscard d'Estaing as Chairman. The Rome Constitution was signed on 29 October 2004.

The Convention is an innovation in as far as previous IGCs have never been preceded by a phase of debate open to all stakeholders. In addition to the members of the Convention (representatives of Heads of State and Government of Member States and candidate States, national parliaments and the European Parliament, and the European Commission), civil society organizations were also able contribute to the debate via an interactive forum, the Forum on the Future of the Union.

See Charter of Fundamental Rights of the European Union; European Constitution; Intergovernmental Conference (IGC); Laeken Declaration.

European Convention on Human Rights (ECHR)

A European Convention on Human Rights, signed in Rome under the aegis of the Council of Europe on 4 November 1950, established an unprecedented system of international protection for human rights, offering individuals the possibility of applying to the courts for the enforcement of their rights. It came into operation in 1953. The ECHR, which has been ratified by all the European Union (EU) Member States, established a number of supervisory bodies based in Strasbourg. These were:

- a Commission responsible for advance examination of applications from Member States or from individuals;
- a European Court of Human Rights, to which cases were referred by the Commission or by a Member State following a report by the Commission (in the case of a judicial settlement);
- a Committee of Ministers of the Council of Europe, which acted as the guardian of the ECHR and to which reference was made, where a case was not brought before the Court, to secure political settlement of a dispute.

Glossary of labour law and industrial relations

The growing number of cases made it necessary to reform the supervisory arrangements established by the Convention (addition of Protocol No. 11). The supervisory bodies were thus replaced, on 1 November 1998, by a single European Court of Human Rights. The simplified structure shortened the length of procedures and enhanced the judicial character of the system.

The idea of the EU acceding to the ECHR has often been raised. However, in an opinion given on 28 March 1996, the European Court of Justice stated that the European Communities could not accede to the European Convention because the Treaty establishing the European Community (EC) does not provide any powers to lay down rules or to conclude international agreements in the matter of human rights. Thus, for the moment, accession depends on the EC Treaty being amended. The Treaty of Amsterdam, which entered into force in 1999, nevertheless calls for respect for the fundamental rights guaranteed by the Convention, while formalizing the judgements of the European Court of Justice on the matter.

With regard to relations between the two Courts, the practice developed by the Court of Justice of incorporating the principles of the Convention into EU law has made it possible to maintain coherence in their work and their independence. Instead, a Charter of Fundamental Rights of the European Union was drawn up and proclaimed in 2000. At the Intergovernmental Conference held in Nice in December 2000, a declaration was adopted and annexed to the Treaty of Nice, which came into force in 2003. This stipulated that as from 2002, one European Council meeting per Presidency would be held in Brussels, and went on to declare that once the EU comprised 18 Member States, all European Councils would be held in Brussels.

See **Charter of Fundamental Rights of the European Union; Court of Justice of the European Union.**

European Council

This is the term used to describe the regular meetings of the Heads of State or Government of the European Union (EU) Member States. It was set up by the communiqué issued at the close of the Paris Summit of December 1974 and first met in Dublin, in March 1975. Before that time, from 1961 to 1974, the practice had been to hold European summit conferences. The existence of the European Council was given legal recognition by the Single European Act (1986), while official status was conferred on it by the Treaty on European Union (1992). It meets at least twice a year and the President of the European Commission attends as a full member. Its objectives are to give the EU the impetus it needs in order to develop further and to define general policy guidelines.

European Court of Auditors

The European Court of Auditors, based in Luxembourg, is composed of 25 members appointed for six years by unanimous decision of the Council of the

European Union after consulting the European Parliament. It checks European Union (EU) revenue and expenditure for legality and regularity, and ensures that financial management is sound. It was set up in 1977 and raised to full institution status by the Treaty on European Union, which came into force in 1993. Under the Treaty of Amsterdam (adopted in June 1997), the Court of Auditors also has the power to report any irregularities to the European Parliament and the Council, and its audit responsibilities have been extended to Community funds managed by outside bodies and by the European Investment Bank. The Treaty of Nice (adopted in December 2000) specifies in detail the composition of the Court of Auditors, which must include a national from each Member State.

European Court of Human Rights *see* **European Convention on Human Rights (ECHR).**

European Court of Justice *see* **Court of Justice of the European Union.**

European Development Fund (EDF)

This is the principal financial instrument for cooperation between the European Union (EU), and the Asian, Caribbean and Pacific (ACP) countries and the overseas countries and territories (OCTs) that depend constitutionally on four Member States. It bases its action on various intervention programmes such as programmable aid, structural adjustment facilities, venture capital, emergency aid and refugee aid. There is not a single EDF, but rather several successive EDFs that have covered periods usually lasting five years.

European Economic and Social Committee (EESC)

Founded in 1957 under the Treaty of Rome (1957), the EESC is an advisory body representing employers, trade unions, farmers, consumers and other interested groups making up “civil society”. It presents their views and defends their interests in policy discussions with the European Commission, the European Council and the European Parliament. The EESC is a bridge between the European Union’s decision-making process: on its own initiative it may give opinions on other matters it considers important. The EESC has 222 members, the number from each EU country roughly reflecting the size of its population. Since new Member States have joined as a result of enlargement, there are a total of 344 members. Members are appointed by unanimous Council decision for four years and this term may be renewed. The Treaty of Nice, adopted in December 2000, did not change the number and distribution by Member State of seats on the Committee. However, eligibility for membership was clarified: the EESC is to consist of “representatives of the various economic and social components of organised civil society” (Article 257, TEC).

European Economic Area (EEA)

In 1958, with the entry in force of the Treaty of Rome, certain non-member countries of Europe, afraid of remaining outside the Western European integration process, signed the Stockholm Convention (1960), instituting the European Free Trade Area (EFTA). The signatories were Austria, Denmark, Norway, Portugal, United Kingdom, Sweden and Switzerland. Within a few years, Finland and Iceland joined EFTA. Simply put, the European Economic Community (EEC) and EFTA comprise the EEA.

The Treaty of the EEA, signed in spring 1992, entered into force on 1 January 1994. It was an agreement between the European Community (EC) on one side, and the Member States of EFTA on the other. This agreement has been designed to allow other European countries to benefit from the advantages of the common market. The EFTA countries participating in the EEA, on their part, agreed to respect the rules of the Common Market. EFTA had up to nine Member States, of which six have joined the European Union (EU). When Austria, Sweden and Finland joined the EU in 1995, EFTA was left with only four members – Iceland, Liechtenstein, Norway and Switzerland. Of these, only the first three take part in the EEA, since Switzerland refused the EEA treaty by referendum. An EEA Enlargement Agreement between the EC and its Member States, the EEA, EFTA States and the accession countries came into force on 1 May 2004.

See **European Free Trade Association (EFTA).**

European Economic Community (EEC) *see* **European Economic Area; European Economic and Social Committee (EESC); European Free Trade Association (EFTA).**

European Employment Strategy (EES)

The Treaty of Amsterdam, which entered into force in 1999, introduced the concept of a European strategy for employment, following on from the integrated strategy for employment launched at the Essen European Council in 1994. At Essen, the European Council had asked the European Union (EU) Member States to draw up multiannual programmes for employment (MAPs) and to provide the Commission with reports on their implementation. These reports described the main measures taken by the Governments to apply their multiannual programmes over the previous 12 months, to assess, in certain cases, the impact of those measures on employment, and to announce major changes or new initiatives in this field.

Following from this, the EES was launched at the Luxembourg Jobs Summit in November 1997 on the basis of the new provisions of the Amsterdam Treaty. It was built around priority themes under the four pillars of employability, entrepreneurship, adaptability and equal opportunities. Each year, the EU Member States draw up National Action Plans on Employment (NAPS) implementing these broad policy guidelines. The NAPS are analysed by the

European Commission and the Council, and the results, presented in a Joint Employment Report, serve as a basis for reprioritizing and making recommendations to EU Member States in respect of their employment policies.

Five years after its launch, an extensive evaluation of the EES was carried out. In January 2003, the Commission adopted a communication presenting a new approach through the EES, better adapted to the needs of an ageing population, increasing women's participation in the labour market, enlargement and the increasing pace of economic change. The aim was to become more closely aligned to the goal of the Lisbon European Council (2000): sustained economic growth, more and better jobs, and social cohesion. In line with the Lisbon Strategy for economic, social and environmental renewal (2000), three overarching objectives have been set by the new European employment guidelines: full employment; quality and productivity at work; and strengthened social cohesion and inclusion. However, EU progress towards the Lisbon Strategy 2010 of a 70 per cent employment rate is unlikely to be met. Against the background of economic slowdown in the EU, in 2003 the European Commission established a European Employment Taskforce.

See European Social Funds (ESF).

European Foundation for the Improvement of Living and Working Conditions

The Foundation is a European agency, one of the first to be established to work in specialized areas of European Union (EU) policy. It was set up by the European Council (Council Regulation 1365/75 of 26 May 1975) to contribute specifically to the planning and design of better living and working conditions in Europe. The Foundation carries out research and development projects to provide data and analysis for informing and supporting the formulation of EU policy on working and living conditions. It has a network of experts throughout Europe who conduct research on its behalf, including assessing the current national situations, the preparation of case studies and national reports, and the conducting of surveys. As part of its research base, the Foundation maintains a number of key monitoring tools, such as the European Industrial Relations Observatory (EIRO), European surveys on working conditions and monitoring quality of life in the EU. In November 2002, it launched the European Monitoring Centre on Change (EMCC) web portal, which will act as an information source focusing on aspects of economic and social change.

The Foundation is managed by an Administrative Board, comprising representatives of governments, employers and workers of each EU Member State and three representatives from the European Commission. This representation of the Governments and the social partners reflects the tripartite nature of the organization's work. A Committee of Experts, composed of specialists drawn from a variety of disciplines and appointed by the Council of Ministers, is responsible for advising the director and the Administrative Board

Glossary of labour law and industrial relations

on all fields within the Foundation's competence. The staff of the Foundation are drawn from all 15 Member States and have a wide range of professional experience and background.

National Liaison Centres (NLCs) have been set up throughout Europe as communication relays for the Foundation. Their role is to act as knowledge navigators at the national level. Every four years the Foundation reviews its strategy and orientation. The previous four-year programme, *Analysing and Anticipating Change to support Socio-Economic Progress, 2001-04*, has been followed by *Changing Europe: Better Work, Better Life, 2005-08*, which aims to look ahead to the opportunities and challenges facing the new Europe of 25 Member States. The four key themes (employment, work-life balance, industrial relations and partnerships, and social cohesion) are completed by three main tasks (monitoring and understanding change, research and exploring what works, and communication and sharing ideas and experience). A driving force of the programme comes from the Lisbon Strategy (March 2000). The Foundation's financing forms part of the general budget of the European Commission and the funds allocated to it are decided in the official budgetary process between the Commission, the Council of Ministers and the European Parliament.

European Free Trade Association (EFTA)

The EFTA Convention established a free trade area among its Member States in 1960, through the Stockholm Convention. These countries, with the exception of Switzerland, entered into the Agreement on the European Economic Area, which came into force in 1994. The current contracting parties, in addition to the three EFTA States, are the European Community and the 25 European Union Member States.

See **European Economic Area.**

European governance

The debate on European governance, launched by the European Commission in its White Paper of July 2001, concerns all the rules, procedures and practices affecting how powers are exercised within the European Union (EU), particularly as regards openness, participation, accountability, effectiveness and coherence. The aim is to adopt new forms of governance that bring the EU closer to European citizens, make it more effective, reinforce democracy in Europe and consolidate the legitimacy of the institutions. The EU must reform itself in order to fill the democratic deficit of its institutions. This governance should lie in the framing and implementation of better and more consistent policies involving civil society organizations and the European institutions. It also entails improving the quality of European legislation, making it clearer and more effective. Moreover, the EU must contribute to the debate on world governance and play an important role in improving the operation of international institutions. The

Commission has participated actively in the Convention on the Future of Europe, established following the Laeken European Council in 2001. The debate led to the signing of the Treaty establishing a Constitution for Europe in October 2004.

See **Convention on the Future of Europe; European Constitution; Laeken Declaration.**

European institutions

Usually seven institutions of the European Union (EU) are meant when this term is used:

- Council of the European Union
- European Commission
- European Parliament
- Court of Justice
- Court of Auditors
- Economic and Social Committee
- Committee of the Regions (CoR)

The three basic institutions of the Community are the Council, Parliament and Commission. The Council represents the governments of the Member States, and is the main decision-making body of the European Union. The Commission represents the supranational interests of the Community, and has the power of initiative and control of the application of the treaties. The Parliament represents the European people, and controls the activity of the Council and the Commission. It shares codecision powers with the Council. This institutional triangle adopts the various laws of the Community.

See entries for the individual institutions.

Economic Interest European Group (EIEG)

The EIEG was created in 1989 as a European Community juridical instrument offering a framework adapted to intra-European cooperation between small and medium-sized enterprises (SMEs).

See **Enterprise policy in the European Union.**

European Investment Bank (EIB)

Set up by the Treaty of Rome (1957), the EIB is the European Community's financial institution. Its task is to contribute to the balanced development of the Community by way of economic integration and social cohesion. The EIB's shareholders are the Member States of the European Union (EU). The bank is administered by the Board of Governors, which consists of finance ministers

from each of the 25 EU Member States. It has legal personality and is financially independent. It provides long-term financing for practical projects of which the economic, technical, environmental and financial viability is guaranteed. It grants loans essentially from resources borrowed on capital markets, to which is added shareholders' equity.

In March 2000 the conclusions of the Lisbon European Council called for a strengthening of support for small and medium-sized enterprises (SMEs). The "EIB Group", which comprises the EIB and the European Investment Fund (EIF), was thus created with a view to boosting European competitiveness. The Corporate Operational Plan (2002-04) defined medium-term policy and set priorities: regional development and economic and social cohesion within the EU; implementation of the "Innovation 2000 Initiative"; environmental protection and improving the quality of life; preparing the accession countries for EU membership; and community development and cooperation with partner countries.

European legislation *see* **Simplification of European legislation.**

European Monitoring Centre on Racism and Xenophobia (EUMC)

The EUMC, based in Vienna, is an independent body of the European Union (EU) established by Council Regulation 1035/97. Its origins go back to June 1994 when the Corfu European Council proposed the establishment of a consultative Commission on Racism and Xenophobia, also known as the Kahn Commission after its Chairman, Jean Kahn. In June 1995, the Cannes European Council called on the Kahn Commission, in cooperation with the Council of Europe, to consider the feasibility of a European Monitoring Centre on Racism and Xenophobia. The Centre started its activities in July 1998. It currently has 25 members of staff.

See **Discrimination; Race.**

European Observatory for Small and Medium-sized Enterprises

Composed of specialized national organizations dealing with small and medium-sized enterprises (SMEs), the Observatory constitutes a European network for the development of SMEs in the European market. It was set up in 1992. Its tasks are as follows:

- evaluation of recent developments of SMEs;
- improvement of the role of SMEs in the economy;
- identification of structural adjustments for the creation of a market without borders;
- identification of regions and sectors in upswing or decline;

- monitoring the environment for SMEs and handicrafts;
- creation and liquidation of enterprises;
- monitoring tendencies of concentration and segmentation in markets and their effects on inter-enterprise relations; and
- analysis of tendencies affecting SMEs in Europe.

The activities of the institute are coordinated by the Dutch Economisch Instituut voor het Midden-en Kleinbedrijf.

See Enterprise policy in the European Union.

European Parliament

This is the assembly of the representatives of the 456 million European Union (EU) citizens (as of September 2004). Since 1979 European Members of Parliament have been elected by direct universal suffrage and today total 732, distributed between EU Member States by reference to their population. The European Parliament's main functions are as follows:

- it considers the European Commission's proposals and is associated with the European Council in the legislative process, in some cases as co-legislator, by means of various procedures (codecision procedure, cooperation procedure, assent, advisory opinion etc.);
- it has the power of control over the EU's activities through its confirmation of the appointment of the Commission (and the right to censure it) and through the written and oral questions it can put to the Commission and the Council;
- it shares budgetary powers with the Council in voting on the annual budget, rendering it enforceable through the President of Parliament's signature, and overseeing its implementation.

It also appoints an Ombudsperson empowered to receive complaints from EU citizens concerning misadministration in the activities of the European Community institutions or bodies. Finally, it can set up temporary committees of inquiry, whose powers are not confined to examining the actions of the Community institutions but may also relate to actions by EU Member States in implementing Community policies.

The Treaty of Amsterdam, which entered into force in 1999, simplified the various legislative procedures by virtually doing away with the cooperation procedure (it still applies in a few cases coming under the Title on Economic and Monetary Union) and considerably extending the codecision procedure. The Treaty of Nice, which entered into force in 2003, also enhanced Parliament's role as co-legislator by extending the codecision procedure and granted Parliament a

right to bring actions before the Court of Justice of the European Union, under the same conditions as the other institutions.

See Treaties.

European Regional Development Fund (ERDF)

Within the framework of the ERDF, regional development programmes are presented to the European Commission by the European Union (EU) Member States in order to benefit from funding co-financed within the priority regional objectives. Originally, the ERDF resources did not go exclusively to the poorest regions of the European Community (EC). Each EU Member State was allocated a percentage quota of the Fund, against which it could bid for support. This provided aid for the weakest regions in each country, no matter how healthy they might be in the context of the EC as a whole.

The latest multi-annual programme runs from 2000-06 and was determined at the European Council Summit in Berlin in March 1999. This followed the Commission's action plan, Agenda 2000, which aimed to provide the European Union (EU) with a new financial framework for enlargement.

See Agenda 2000.

European Social Charter *see* **Community Charter of the Fundamental Rights of Workers (Social Charter).**

European Social Fund (ESF)

The ESF is the main financial tool through which the European Union (EU) translates its strategic employment policy aims into action. Already set up by the Treaty of Rome (1957), it is the longest established Structural Fund which, for over 40 years, has invested, in partnership with the Member States, in programmes to develop people's skills and their potential for work.

The ESF now stands at an important point in its development. A new seven-year period began in 2000 for the ESF, in which its own potential has been fully integrated – in both policy and management terms – into what is done at EU Member State level to put the European Employment Strategy's priorities into practice. The Strategy involves the EU Member States working together towards common agreed goals to prepare people for work, and to create a better climate for jobs. The ESF provides EU funding on a major scale for programmes that develop or regenerate people's "employability". This task focuses on providing citizens with appropriate work skills as well as developing their social interaction skills, thereby improving their self-confidence and adaptability in the job marketplace.

The ESF channels its support into strategic long-term programmes that help regions across Europe, particularly those lagging behind, to upgrade and modernize workforce skills and to foster entrepreneurial initiative. This

encourages domestic and foreign investment into the regions, helping them to achieve greater economic competitiveness and prosperity. Programmes are planned by Member States together with the European Commission and then implemented through a wide range of provider organizations, both in the public and the private sectors. These organizations include national, regional and local authorities, educational and training institutions, voluntary organizations and the social partners (i.e. trade unions and works councils, industry and professional associations, and individual companies). The ESF acts as a catalyst for new approaches to projects, harnessing and bringing to bear the combined resources of all involved. It fosters partnerships at many different levels and encourages the Europe-wide transfer of knowledge, sharing of ideas and best practice, ensuring that the most effective new solutions are incorporated into mainstream policies.

The framework and priorities of the ESF have been redefined for the period 2000–06 to support the European Employment Strategy as part of the Agenda 2000 reform of the structural funds.

See **Agenda 2000; EQUAL; European Employment Strategy (EES).**

European Trade Union Confederation (ETUC)

Established in 1973, the ETUC is the major umbrella organization for European Union (EU) Member States' national trade union confederations. Based in Brussels, it is represented on several European Community (EC) committees and organizations, and has been particularly active in supporting EC initiatives on workers' rights, in particular the Charter of Fundamental Social Rights of Workers. Under the Treaty on European Union (as amended by the Treaty of Amsterdam), the ETUC is recognized as one of the three "social partners", alongside industry associations such as the Union of Industrial and Employers Confederations of Europe (UNICE), with which the European Commission negotiates draft social and economic legislation. It also maintains close liaison with the International Confederation of Free Trade Unions (ICFTU). In 2004, the ETUC comprised 76 national trade union confederations from 34 countries in Europe, and 11 federations representing European industry, a total membership of some 60 million people.

The Social Protocol of the Maastricht Treaty (1992) gave the European social partners the right to negotiate. Two European framework agreements on parental leave and part-time work have been signed by the ETUC and the UNICE/CEEP (European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest).

See **Charter of Fundamental Social Rights of Workers; European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest; International Confederation of Free Trade Unions (ICFTU); Unions of Industrial and Employers' Confederations of Europe (UNICE).**

European Training Foundation (ETF)

This agency was created by the European Union (EU), following a Regulation of 7 May 1990, and has been operating since 1995. It supports the reform of vocational and partner countries, and translates EU policy into training and labour market instruments for third countries. From 1994 Central and Eastern Europe were targeted, but activity has increased in Bulgaria and Romania, and is being stepped up in Turkey, within the TEMPUS (later PHARE) and MEDA programmes.

See **Closer cooperation in the European Union.**

European Union

The Treaty on European Union was signed in Maastricht on 7 February 1992. It entered into force on 1 November 1993. The Maastricht Treaty changed the name of the European Economic Community to simply “the European Community”. It introduced new forms of cooperation between Member State Governments such as justice and home affairs, or defence. By adding this intergovernmental cooperation to the existing “Community” system, the Maastricht Treaty created a new structure which is both political and economic. This is the European Union (EU).

See **European Community; Enlargement of the European Union; European Union citizenship; Treaties.**

European Union citizenship

This is a concept that remained undeveloped within the European Communities (EC) until the intergovernmental conferences of 1991 that preceded the Maastricht Summit (1992). While certain individual rights were provided by the Treaty of Rome (1957), they were based essentially upon the economic objectives set by the Treaty. Although these rights were strengthened by rulings of the European Court of Justice, they were limited in number and scope, and did not in any way provide a condition of citizenship.

This gap in EC thinking was directly addressed by the Treaty on European Union (TEU), which came into force in 1993 and attempted to formalize and develop the concept of citizenship beyond the economic rights of workers. The aim of introducing and defining citizenship was part of the ambition to make the European Union (EU) more democratic and to instil in its inhabitants identification with and commitment to the EU. However, it is not totally clear what citizenship is or involves. There are no references to the duties of citizens and, since the EU does not have a legal personality, citizenship would seem to lie within the European Community pillar, which is the only part of the EU in which the European Court of Justice, as the guarantor of rights, has jurisdiction. In addition, the TEU reaffirmed that sovereignty rested with the EU Member States, and therefore questions of nationality and citizenship should be decided

at the national level. Even though EU citizenship is therefore indirect, its establishment was not accepted unanimously. There were fears, particularly among Eurosceptics, that the introduction of a formalized citizenship would be used by the European institutions to further reduce the freedom of the Member States, with the long-term aim of EU citizenship superseding national citizenship.

All nationals or citizens of EU Member States are automatically also citizens of the EU. This may but need not involve the citizen more directly in European integration. It also gives him/her the right to:

- circulate (i.e. to travel) and remain and live freely on the territory of any or all Member States;
- take part in elections to the European Parliament and in municipal elections in the country of residence;
- benefit from diplomatic and consular protection by the authorities of all Member States;
- have access to extrajudicial recourse through a mediator; and
- petition the European Parliament and to have recourse to the European Ombudsperson.

Other rights guaranteed to EU citizens are: non-discrimination by reason of nationality, and by reason of sex, racial or ethnic origin, religion or belief, age or sexual orientation.

Education will be the key element of European citizenship. The rights introduced in Maastricht, included in the Treaty of Amsterdam (1997), will lead to a citizenship of the EU whose rights and duties will be connected to daily life and will form the basis for a European identity.

See **Discrimination; Fundamental rights; Treaties.**

European University Institute (EUI)

The EUI was founded in 1976 as part of the European Communities (EC) policy of encouraging cooperation in higher education. Based in Florence, Italy, the EUI is an establishment for research and training in postgraduate education, offering doctoral programmes in economics, history and civilization, law and political and social sciences. Entry for students is competitive. Those accepted onto the programmes are funded by their national governments and are expected to have some competence in more than one language of the European Union. Staff appointments, made on the basis of open competition, are funded by the EC and are for fixed terms of between three and seven years. The EUI is the depository for the historical archives of the EC institutions.

European Works Council

The European Council Directive 94/45/EC of 22 September 1994 (amended by Council Directive 97/74/EC of 15 December 1997) on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees is intended to improve the right to information and to consultation of these groups of employees. The main provisions of the Directives include the establishment of a European Works Council or a procedure for informing and consulting employees in every Community-scale undertaking and every Community-scale group of undertakings, following agreement between the central management and a special negotiating body.

For the purposes of the Directives:

- “Community-scale undertaking” means any undertaking with at least 1,000 employees within the European Union (EU) Member States and at least 150 employees in each of at least two Member States;
- “group of undertakings” means a controlling undertaking and its controlled undertakings;
- “Community-scale group of undertakings” means a group of undertakings with the following characteristics:
 - at least 1,000 employees within the EU Member States;
 - at least two group undertakings in different EU Member States; and
 - at least one group undertaking with at least 150 employees in one EU Member State and another group undertaking with at least 150 employees in another Member State;
- “controlling undertaking” means an undertaking that can exercise a dominant influence over another undertaking by virtue, for example, of ownership, financial participation or the rules that govern it;
- “consultation” means the exchange of views and establishment of dialogue between employees’ representatives and central management or any more appropriate level of management.

The central management:

- will be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure;
- will initiate negotiations on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings in at least two EU Member States.

The special negotiating body, comprising a minimum of three and a maximum of 18 members:

- will have the task of determining, with the central management, by written agreement, the scope, composition, competence and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees;
- may decide, by at least two-thirds of the votes, not to open negotiations or to terminate the negotiations already opened; such a decision would stop the procedure to conclude the agreement and would nullify the provisions of the Annex.

Members of the special negotiating body and of the European Works Council, and any experts who assist them, will not be authorized to reveal any information that has expressly been provided to them in confidence.

European Community-scale undertakings and Community-scale groups of undertakings in which there is already an agreement covering the entire workforce, providing for the transnational information and consultation of employees, will not be subject to the obligations arising from the Directives. When these agreements expire, the parties involved may decide jointly to renew them. Where this is not the case, the provisions of the Directives will apply.

Subsidiary requirements laid down by the legislation of the EU Member State in which the central management is situated will apply:

- where the central management and the special negotiating body so decide, or;
- where the central management refuses to commence negotiations within six months of the initial request to convene the special negotiating body, or;
- where, after three years from the date of this request, they are unable to conclude an agreement to establish a European Works Council or an information and consultation procedure, and the special negotiating body has not taken the decision not to open negotiations or to terminate the negotiations.

These subsidiary requirements must satisfy the provisions set out in the Annex, whereby:

- the competence of the European Works Council will be limited to information and consultation on matters which concern the Community-scale undertaking as a whole, or at least two establishments or group undertakings situated in different EU Member States;
- the European Works Council is to have a minimum of three and a maximum of 30 members and, where its size so warrants, is to elect a select committee from among its members, comprising at most three members;

Glossary of labour law and industrial relations

- four years after the European Works Council is established, it is to consider whether to open negotiations for the conclusion of the agreement on the arrangements for implementing the information and consultation of employees, or to continue to apply the subsidiary requirements adopted in accordance with the Annex;
- the European Works Council will have the right to meet with the central management once a year in order to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects;
- where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocation, closure or collective redundancy, the select committee or, where no such committee exists, the European Works Council will have the right to be informed;
- the members of the European Works Council are to inform the employees' representatives of the content and outcome of the information and consultation procedure;
- the operating expenses of the European Works Council are to be borne by the central management; in compliance with this principle, the EU Member States may lay down budgetary rules regarding the operation of the European Works Council.

See **Collective redundancies; Consultation of employees; Information and consultation of employees.**

Exploitation

Immigrants to the European Union (EU) can be exploited by criminals involved in the illegal smuggling of humans. In order to prevent this, the EU is supporting cooperation between law enforcement authorities, aiming to shape a flexible approach to immigration restrictions, and cooperating with countries of origin to eliminate causes of immigration.

See **Abolition of forced labour.**

F

Family leave

A right to leave for family reasons which may or may not be shared between the parents.

Family responsibilities *see* **Workers with family responsibilities.**

Family worker

A family member working in a family business such as a farm, shop, small business or professional practice – frequently a wife, daughter or son.

Feminization of poverty

The increasing incidence and prevalence of poverty among women as compared with men.

Financial participation

A form of workers' participation in the management, the financial results or the ownership of the enterprise, of which the most common forms are sharing of and consultation over financial information with workers, bonus or piece-work schemes, profit sharing and share/stock acquisition schemes. Such participation is unlikely to provide increased opportunities for workers to influence decision-making in the enterprise unless integrated with other broader forms of worker involvement.

See **Workers' participation.**

Fixed-term work

EU Directive 99/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work, concluded by the UNICE (Union of Industrial and Employers' Confederations of Europe), the CEEP (European Centre of Enterprises with Public Participation) and the ETUC (European Trade Union Confederation) established a general framework encompassing general principles and minimum provisions relating to fixed-term work, to ensure equal treatment of workers. This Directive aimed to implement the Framework Agreement on Fixed-term Work concluded on 18 March 1999 by the UNICE, the CEEP and the ETUC. The Agreement covers only working

Glossary of labour law and industrial relations

conditions for fixed-term employees; statutory social security schemes are the prerogative of the European Union (EU) Member States. It concerns fixed-term workers (including seasonal workers), with the exception of workers placed at the disposal of a user undertaking by a temporary employment agency. However, the parties intend to adopt a similar agreement to cover temporary employment.

Moreover, the Member States may provide that this Agreement does not apply to:

- initial vocational training relationships and apprenticeship schemes;
- employment contracts and relationships entered into in connection with a specific public or publicly supported training, integration or vocational retraining programme.

The Agreement forbids employers to treat fixed-term workers in a less favourable manner than permanent workers solely because they have a fixed-term contract, unless the difference in treatment can be justified on objective grounds. It aims to improve the quality of fixed-term work by ensuring application of the principle of non-discrimination, and to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, the EU Member States, after consultation with the social partners, must introduce one or more of the following measures (taking account of the needs of specific sectors and/or categories of workers):

- objective reasons justifying the renewal of such contracts or relationships;
- the maximum total duration of successive fixed-term employment contracts or relationships;
- the number of renewals.

As far as possible, employers must facilitate access for fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility.

Fixed-term workers must be taken into consideration in calculating the threshold above which workers' representative bodies may be constituted. EU Member States may introduce more favourable provisions than set out in the Directive. Implementation cannot constitute valid grounds for reducing the general level of protection afforded to workers in the field of the Directive. Member States must determine the penalties applicable for infringements of national provisions implementing this Directive, and must bring into force the laws, regulations and administrative provisions.

See Working time (organization of).

Fixed-term worker

A person having an employment contract or relationship entered into directly between an employer and a worker, where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

See **Fixed-term work**.

Flexibility of working time/working hours

This refers to formulas of working time that offer a range of possibilities in relation to the number of hours worked and the arrangements of rosters, shifts or work schedules on a daily, weekly, monthly or yearly basis.

See **Working time (organization of)**.

Forced labour *see* **Abolition of forced labour**.

Foreign workers

Foreign workers contribute to the economic and social life of the European Union, which has introduced laws to clarify the circumstances and facilitate the conditions under which a person from a third country may be employed.

Foreigners

The European Union (EU) and its Member States have signalled that they will not tolerate racism and xenophobia against foreigners. The European Commission is proposing a framework decision to bring EU Member State laws closer together in this area.

See **Racism and xenophobia**.

Four freedoms *see* “**The four freedoms**”.

Free association

The right to associate freely in the European Union (EU) has been established by the case-law of the European Court of Justice

See **Charter of Fundamental Rights of the European Union**; **Free movement of workers**.

Free expression

The right to free expression in the European (EU) has been established by the case-law of the European Court of Justice.

See **Charter of Fundamental Rights of the European Union**.

Free movement of persons (visas, asylum, immigration and other policies)

The Treaty of Amsterdam, which entered into force in 1999, introduced a new Title IV into the Treaty establishing the European Community (1957). It covers

Glossary of labour law and industrial relations

the following fields:

- free movement of persons;
- controls on external borders;
- asylum, immigration and safeguarding the rights of third-country nationals;
- judicial cooperation in civil matters.

These fields used to come under Title VI of the Treaty on European Union (1992) (Justice and home affairs), but now the Treaty of Amsterdam has “communitized” them, in other words, brought them under the legal framework of the first pillar.

During a five-year transition period following the entry into force of the Treaty of Amsterdam:

- the European Commission shares the right of initiative with the EU Member States;
- the Council acts unanimously (except for certain rules on visas) after consulting the European Parliament;
- the European Court has jurisdiction in accordance with the rules of the EC Treaty (apart from a few exceptions under Article 62.1, TEC).

After this five-year period:

- the Commission will have sole right of initiative;
- the Council will be able to decide unanimously, after consulting the European Parliament, on the application of qualified-majority voting and the co-decision procedure;
- however, the transition to qualified-majority voting and to the co-decision procedure will be automatic (without a unanimous vote by the Council) for the issuing of visas and the rules concerning the uniform visa.

The Treaty of Nice, which entered into force in 2003, has extended the scope of this automatic transition from unanimous to qualified-majority voting. First, qualified-majority voting applies from the entry into force of the Treaty in the fields of asylum and refugees (on condition that Community legislation has been adopted) and of judicial cooperation in civil matters with a cross-border dimension, except for aspects involving family law. Second, qualified-majority voting will apply from 1 May 2004 (in accordance with the five-year transition period) to measures concerning the free movement of nationals of non-member countries on the territory of the EU Member States for a maximum period of three months, illegal immigration, and administrative cooperation on the free

movement of persons. On the basis of the Treaty of Amsterdam, the United Kingdom and Ireland have opted out of measures taken under Title IV. Denmark will participate only in measures relating to visas.

See Free movement of workers.

Free movement of workers

The freedom of movement for workers within the European Union (EU) is regulated by Articles 39-42, TEC (new Articles III-18 to 21). In accordance with the Treaty of Rome establishing the European Economic Community (1957), freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the EU Member States as regards employment, remuneration and other conditions of work and employment. It shall entail the right to the following actions, subject to limitations justified on grounds of public policy, public security or public health:

- accept offers of employment actually made;
- move freely within the territory of Member States for this purpose;
- reside in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
- remain in the territory of a Member State after having been employed in that State, subject to conditions that shall be embodied in implementing regulations to be drawn up by the Commission.

The above-mentioned provisions are not applicable to employment in the public service.

With a view to applying this principle, the Council, acting in accordance with established procedures and after consulting the Economic and Social Committee, issued a number of directives and regulations to enforce the freedom of movement for workers, in particular by:

- ensuring close cooperation between national employment services;
- systematically and progressively abolishing those administrative procedures and practices and those qualifying periods with respect to eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to the liberalization of the movement of workers;
- systematically and progressively abolishing all qualifying periods and other restrictions provided either under national legislation or under agreements

Glossary of labour law and industrial relations

previously concluded between Member States that imposed conditions regarding the free choice of employment on workers of other Member States that differ from those imposed on workers of the State concerned;

- setting up appropriate machinery to bring offers of employment in touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

In this context, Member States have set up joint programmes for encouraging the exchange of young workers. The Council, acting on proposals from the Commission, has adopted measures in the field of social security for providing arrangements to secure the following for migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefits and of calculating the amount of benefits, of all periods taken into account under the laws of the various countries; and
- (b) payment of benefits to persons resident in the territories of Member States.

See Employment services; Free movement of persons (visas, asylum, immigration and other policies); Migration for employment; Youth.

Free rider

A worker who enjoys the benefits of improved terms and conditions of employment that have been gained by a trade union in the course of collective bargaining, without belonging to it and without paying dues or other fees and assessments to the union.

Freedom of association and protection of the right to organize

ILO Convention No. 87 (1948) concerns the right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests. Workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing with a view to furthering and defending their respective interests. Such organizations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programmes. Public authorities shall refrain from any interference that would restrict this right or impede the lawful exercise of this right. The organizations shall not be liable to be dissolved or suspended by administrative authority.

Organizations have the right to establish and join federations and confederations that shall enjoy the same rights and guarantees. Convention No. 87 also provides for the right to affiliate with international organizations. The

acquisition of legal personality by all these organizations shall not be subject to restrictive conditions. In exercising the rights provided for in the Convention, employers and workers and their respective organizations shall respect the law of the land. The law of the land and the way in which it is applied, however, shall not impair the guarantees provided for by the Convention.

See Workers' rights.

Fundamental principles and rights at work *see* **Declaration on Fundamental Principles and Rights at Work.**

Fundamental rights

European Treaties and case-law provide for fundamental human rights as well as rights connected with European Union (EU) citizenship, such as freedom of movement throughout the EU. These rights are summed up in the Charter of Fundamental Rights of the European Union, proclaimed in December 2000. The EU has always affirmed its commitment to human rights and fundamental freedoms, and has explicitly confirmed the Union's attachment to fundamental social rights. The Amsterdam Treaty, which came into force in 1993, has established procedures intended to secure their protection. The Treaty stresses the respect of the fundamental rights, especially those guaranteed by the European Convention on Human Rights (ECHR), adopted in Rome in 1950 by the members of the Council of Europe. The Preamble of the European Community Treaty (Treaty of Rome, 1957) refers to the fundamental social rights by pointing to the 1961 European Social Charter (Council of Europe), amended in 1996, and the 1989 Community Charter of the Fundamental Social Rights of Workers.

According to the Treaty, the EU has the power to take appropriate action to combat discrimination. The possible grounds of intervention are discrimination based on sex, race or ethnic origin, religion, belief, disability, age or sexual orientation. In this regard, the EU has implemented policies to achieve equal opportunities for women and men. The Amsterdam Treaty has formally empowered the European Court of Justice to ensure the respect of fundamental rights and freedoms by the European institutions. The Nice European Council (December 2000) welcomed the joint proclamation, by the Council, the European Parliament and the Commission, of the Charter of Fundamental Rights of the European Union, combining in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources. The European Council would like to see the Charter disseminated as widely as possible amongst the EU citizens. The question of the Charter's force will be considered later.

See **Charter of Fundamental Rights of the European Union; Community Charter of the Fundamental Rights of Workers (Social Charter); Discrimination; European Convention on Human Rights.**

G

Gender

A concept that refers less to the biological differences between women and men than to social differences, which are changeable over time, and have wide variations both within and between cultures. European Union citizenship confers the right to protection from discrimination on the grounds of, among other things, gender. This is enshrined in the Charter of Fundamental Rights of the European Union (2000).

See **Discrimination**; *other articles under* “**Gender**”.

Gender analysis

This is the study of differences in the conditions, needs, participation rates, access to resources and development, control of assets, decision-making powers, and other factors between women and men in their assigned gender roles.

Gender audit

The analysis and evaluation of policies, programmes and institutions in terms of how they apply gender-related criteria.

Gender-based violence/sexual violence

Any form of violence by use or threat of physical or emotional force, including rape, spouse battering, sexual harassment, incest and paedophilia.

See **Sexual harassment**; **Violence at work**.

Gender blind

The ignoring/failing to address the gender dimension. This contrasts with concepts such as gender sensitive or gender neutral.

Gender contract

A set of implicit and explicit rules governing gender relations that allocate different work, value, responsibilities and obligations to men and women. These are maintained on three levels: cultural superstructure (i.e. the norms and values of society); institutions (family welfare, education and employment systems, etc.); and socialization processes, notably in the family.

Gender dimension

Any aspect relating to gender.

Gender-disaggregated data

The collection and separation of data and statistical information by gender to enable comparative or gender analysis.

Gender distribution of paid and unpaid work *see* **Division of labour (by gender).**

Gender equality

The concept that all human beings are free to develop their personal abilities and make choices without limitations set by strict gender roles, and that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally.

Gender equality and mainstreaming (ILO)

The ILO has identified gender as an issue cutting across all its programmes and activities in the world of work. Its Action Plan on Gender Equality and Gender Mainstreaming, launched in 2001, is designed as a cross-cutting strategy across the ILO's strategic objectives. The Action Plan covers a new methodology for gender analysis of social and labour issues, and the provision of gender-sensitive data, development tools and indicators. Mechanisms ensure that gender concerns are incorporated into planning, programming, implementing, monitoring and evaluating the ILO's programmes and activities.

Gender equity

Fairness of treatment by gender, which may be equal treatment or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities.

Gender gap

The gap in any area between women and men in terms of their levels of participation, access to resources, remuneration and benefits.

Gender impact assessment

This refers to examining policy proposals to see whether they will affect women and men differently, with a view to adapting these proposals to make sure that discriminatory effects are neutralized and that gender equality is promoted.

Gender mainstreaming (EU)

This refers to the systematic integration of the respective situations, priorities and needs of women and men in all policies, and with a view to promoting

Glossary of labour law and industrial relations

equality between women and men and mobilizing all general policies and measures specifically for the purpose of achieving equality. This is done by actively and openly taking into account, at the planning stage, the effects of such policies and measures on the respective situations of women and men in implementation, monitoring and evaluation.

Whereas the old approach to integrating gender in the development policy focused exclusively on the role of women, the European Programme of Action for the Mainstreaming of Gender Equality placed greater emphasis on the general relationship between gender and development. From this perspective, it involves tackling the entire problem of gender inequality by also looking at the role of men. In this respect, the Commission Communication of 21 February 1996 established a long-term incremental approach. The Commission also believed that it was time to give priority to positive discrimination measures.

Gender was to be integrated around three main axes, namely:

- the analysis and integration of gender within the priority areas identified by the Community development policy;
- strengthening gender mainstreaming within projects and programmes at regional and country levels;
- gender capacity building.

Implementation

The programme of action is implemented over a five-year period (2001-06). There will be both mid-term and final evaluations. It will also form an integral part of the annual report on the implementation of the European Community's development policy.

Gender neutral

Having no positive or negative impact for gender relations or equality between women and men.

Gender pay differential

An existing difference between the earnings of men and women arising from job segregation and direct discrimination.

Gender pay gap

The gap between the average earnings of men and women.

Gender perspective

The consideration and attention given to gender differences in any given policy area or activity.

Gender planning

An active approach to planning which takes gender as a key variable or criterion, and which seeks to incorporate an explicit gender dimension in policy or action.

Gender proofing

A check carried out on any policy proposal to ensure that any potential gender discriminatory effects arising from that policy have been avoided and that gender equality is promoted.

Gender relations

The relationship and unequal power distribution between women and men that characterize any specific gender system.

See **Glass ceiling.**

Gender relevance

The question of whether a particular policy or action is relevant to gender relations or equality between women and men.

Gender roles

A set of prescriptions for action and behaviour allocated to women and men respectively.

See **Gender contract.**

Gender sensitive

Addressing and taking into account the gender dimension.

General Agreement on Tariffs and Trade (GATT)

The GATT entered into force on 1 January 1948 as a provisional agreement and remained so until it was superseded as an international organization by the World Trade Organization (WTO) framework on 1 January 1995. It established multilateral obligations for trade in goods, including most-favoured-nation treatment and national treatment, transparency, freedom of transit, anti-dumping and countervailing duties, customs valuation, import and export fees and formalities, marks of origin, quantitative restrictions, balance-of-payments provisions, subsidies, state trading enterprises, emergency action on imports (safeguards), customs unions and free-trade areas, etc. Part IV of the GATT, added in 1964, exempted developing countries from making reciprocal trade concessions. An updated General Agreement is now one of the WTO's agreements.

See **World Trade Organization (WTO).**

Glass ceiling

An “invisible barrier” arising from a complex set of structures in male-dominated organizations, which prevents women from obtaining senior positions.

Global Employment Agenda (ILO)

The conviction that employment is fundamental to the fight against poverty and social exclusion was a conclusion of both the World Summit on Social Development (1995) and the 24th Special Session of the United Nations General Assembly in 2000, which called upon the ILO to develop a coherent international strategy for the promotion of freely chosen productive employment. The Global Employment Agenda was the ILO’s response. The Agenda’s main aim is to place employment at the heart of economic and social policies. Consistent with the United Nations Millennium Development Goals, it attaches particular importance to improving the productivity of working men and women, especially of the working poor.

The seven proposed principles or “pillars” are:

- decent work as a productive factor;
- a pro-macroeconomic framework;
- entrepreneurship and private investment;
- improving the productivity and opportunities of the working poor;
- ending discrimination in the labour market;
- environmentally and socially sustainable growth;
- employability and adaptability.

National employment agendas for decent work are being put into place in several countries.

See **Globalization; Globalization of the economy.**

Globalization

The term describes the increasing integration of national economic systems through growth in international trade, investment and capital flows. Definitions of globalization are too numerous to list here. Globalization is promoted by rapid improvements in international transport and communications. But many do not see globalization simply as an economic matter. This is because one of its effects is the relocation and integration of production processes among countries, reflecting the most appropriate technology and the best production cost. Globalization implies a degree of reciprocal action and interdependence and a greater exposure to global economic developments, described by some as a loss of independence by national governments. Greater participation in the international

economy has social and political implications. Inflows of foreign investment into developing countries cause changes in employment and national income.

Opponents of globalization claim that it increases the gap not only between rich and poor countries, but also among the peoples especially of developing countries. Some claim that globalization simply means corporations chasing ever cheaper labour and raw materials, and governments willing to ignore consumer, labour and environmental laws. To them, globalization is an insidious result of market forces, the economic power of multinational corporations and the growth of world trade. Their preferred remedy would be to restrict trade and investment flows.

Defenders of globalization say poverty has many causes, including weak and corrupt governmental institutions and, for example, poor education and health services. They claim that developing countries that have opened their economies have seen the greatest reductions in poverty, and they cast doubt on the notion of rising global inequality.

See **Global Employment Agenda (ILO); Globalization of the economy; World Commission on the Social Dimension of Globalization; World Trade Organization.**

Globalization of the economy

The phenomenon of economic globalization was identified by the Turin European Council (March 1996) as one of the major challenges facing the European Union at the end of the twentieth century. The term refers to a process of growing economic integration worldwide, and the main driving forces behind it are:

- the liberalization of international trade and capital movements;
- accelerating technological progress and the advent of the information society;
- deregulation.

These three factors accentuate each other: technological progress stimulates international trade and worldwide patterns of trade allow for more effective dissemination of technological progress. At the same time, deregulation stimulates the development of new forms of technology and contributes to removing barriers to trade. Some observers, however, blame technological progress for enabling businesses and individuals to find a way round national regulations more easily.

See **Globalization; World Trade Organization.**

Go-slow

A form of industrial action used by workers as a way of expressing dissatisfaction or imposed in support of a bargaining claim. It involves a reduction in work effort or output rather than complete stoppage of work.

See **Industrial action.**

Green Paper

European Commission Green Papers are documents intended to stimulate debate and launch a process of consultation at European level on a particular topic (such as social policy, the single currency, telecommunications). These consultations may then lead to the publication of a White Paper, translating the conclusions of the debate into practical proposals for European Community action.

Grievance

Any complaint either by a worker, a group of workers or a trade union, or by an employer, a group of employers or an employers' organization, regarding some specific aspect of the employment relationship, or – in the case of workers – regarding employment conditions or the employer's policy and practices.

Group of undertakings

A set of organizations consisting of a controlling undertaking and its controlled undertakings.

See **Community-scale group of undertakings; European Works Council; Statute for a European Company.**

Guarantee institutions (employer's insolvency)

In European Union (EU) labour law, institutions that guarantee the payment of workers' outstanding claims resulting from contracts of employment or employment relationships, and relating to pay for the period prior to a given date. Each EU Member State can determine this date to be one of the following: that of the onset of the employer's insolvency; that of the notice of dismissal issued to the workers concerned because of the employer's insolvency; or that on which the contract of employment or the employment relationship with the worker concerned was discontinued on account of the employer's insolvency.

In general, Member States shall ensure one of the following:

- payment of outstanding claims relating to pay for the last three months of the contract of employment or employment relationship occurring within a period of six months preceding the date of the onset of the employer's insolvency;
- payment of outstanding claims relating to pay for the last three months of the contract of employment or employment relationship preceding the date of the notice of dismissal issued to the worker on account of the employer's insolvency;
- payment of outstanding claims relating to pay for the last 18 months of the contract of employment or employment relationship preceding the date of the onset of the employer's insolvency or the date on which the contract of employment or the employment relationship with the worker was discontinued on account of the employer's insolvency.

In the latter case, Member States may limit the liability for payment to a period of eight weeks or to a number of shorter periods totalling eight weeks. However, in order to avoid the payment of sums that exceed the social objective in cases of employer insolvency, Member States may set a ceiling on liability for workers' outstanding claims. In this case, Member States shall inform the Commission of the methods used to set the ceiling. Furthermore, Member States shall lay down detailed rules for the organization, financing and operation of the guarantee institutions, complying with a number of principles, in particular:

- The assets of the institutions shall be independent of the employers' operating capital and be inaccessible to proceedings for insolvency.
- Employers shall contribute to the financing, unless this is fully covered by public authorities.
- Institutions' liabilities shall not depend on whether or not obligations to contribute to financing have been fulfilled.

See **Insolvency of the employer; Insolvency (state of); Protection of workers' claims (employer's insolvency).**

Harassment *see* **Sexual harassment.**

Health and safety at work

European Action Programmes implemented in the field of health and safety at work since 1978 have pursued the following specific objectives:

- improvement in working conditions from the point of view of greater safety with due regard to health imperatives in the organization of work;
- better knowledge of the causes of occupational accidents and diseases with a view to identifying and assessing the risks, and implementation of more effective control and prevention methods;
- improvement in human behaviour with a view to developing and fostering health and safety awareness.

More recent Community legislation relating to health and safety at work falls into three groups:

- measures taken in pursuance of the framework Directive 89/391/EEC, which contains basic provisions for health and safety organization at the workplace; it outlines the responsibilities of employers and workers, and is supplemented by individual directives for specific groups of workers, workplaces or substances (*see* **Health and safety at work: Responsibilities of employers and workers**);
- measures taken in pursuance of the framework Directive 80/1107 EEC, which is designed to protect the health and safety of workers against the risks arising from exposure to chemical, physical and biological agents at the workplace, supplemented by individual directives dealing with specific agents;
- measures stemming from directives that contain exhaustive provisions unconnected to the framework directives, in respect of occupational activities or specific groups at risk.

Major achievements include:

- *Setting up of the European Agency for Health and Safety at Work in Bilbao.* Its task is to supply information on working conditions and health and safety at

work. In this context, it will collaborate closely with the Dublin-based European Foundation for the Improvement of Living and Working Conditions. The Bilbao Agency is a source of scientific, technical and economic information for all concerned (see **European Agency for Health and Safety at Work; European Foundation for the Improvement of Living and Working Conditions**).

- *Transposal and updating of existing legislative measures.* Community legislation is becoming a reality for the general public. In cases where the Commission finds that European Union (EU) Member States have in some way or other failed to incorporate European legislation into national law, it is obliged to bring infringement proceedings against them. The Commission has also rationalized and consolidated the existing directives by updating them where necessary to take account of new risks or to allow for technical and scientific progress.
- *SAFE Programme* (see **Safety, hygiene and health at work – SAFE programme**).
- *Making legislation more effective.* A comprehensive up-to-date body of Community legislation exists in the area of occupational health and safety. The Commission is at present examining whether national legislation conforms to the EU standards. Correct transposal needs to be matched by proper implementation and practical application. The Commission, based on the reports which the Member States are required to submit, and its own evaluation, will assess the implementation of national legislation, the degree of compliance at workplace level and the efforts made in the interest of implementation.
- *Enlargement.* The Commission's strategy for enlargement is set out in its Agenda 2000. One of the key strategic principles is that the applicant countries take on the rights and obligations of membership deriving from the Community *acquis* and are expected to apply, implement and enforce the *acquis* upon accession. The Commission has identified health and safety at work as one of the key elements of the *acquis* in the social area.
- *Strengthening the link with employability.* A good and safe working environment is important for the individual in order to maintain health and working capacity. At the same time, such an environment is a significant competitive factor for businesses. The quality of work and its organization increasingly influences the availability of skilled labour, the motivation of staff and the development of human resources in general. Sustainable employment growth and enhanced employability are two of the main elements of the European Employment Strategy agreed at the Luxembourg and Amsterdam Summits. Measures to improve health and safety at work make an important contribution to the employability of the workforce.

Glossary of labour law and industrial relations

- *Safeguarding good working conditions in a time of change.* The labour market is changing. One important trend is the emergence of a service economy, which raises new challenges for occupational health and safety. Another aspect to take into consideration is the steady increase of women in employment, entailing specific health and safety requirements. A third trend is the ageing of the workforce, which underlines the need for workers to stay longer in the labour market, and may also have specific health and safety implications. A fourth factor affecting health and safety conditions is the development of new forms of work organization. The widespread implementation of new technologies and new forms of work organization might reduce old risks but may also lead to new problems.

See **European Employment Strategy; Occupational health services (ILO); Occupational safety and health (ILO).**

Health and safety at work: Responsibilities of employers and workers

EU Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ensures a higher degree of protection of workers at work in the European Union through the implementation of preventive measures to guard against accidents at work and occupational diseases, and through the information, consultation, balanced participation, and training of workers and their representatives. The Directive applies to all sectors of activity, both public and private, with the exception of certain specific activities in the public and civil protection services.

Employers are obliged to:

- ensure the safety and health of workers in every aspect related to the work, primarily on the basis of the specified general principles of prevention, without involving the workers in any financial cost;
- evaluate the occupational risks, inter alia in the choice of work equipment and the fitting-out of workplaces, and make provision for adequate protective and preventive services;
- keep a list of, and draw up reports on, occupational accidents;
- take the necessary measures for first aid, firefighting, evacuation of workers and action required in the event of serious and imminent danger;
- inform and consult workers, and allow them to take part in discussions on all questions relating to safety and health at work;
- ensure that each worker receives adequate safety and health training throughout the period of employment.

Workers are obliged to:

- make correct use of machinery, other means of production, personal protective equipment and safety devices;
- give warning of any work situation presenting a serious and immediate danger and of any shortcomings in the protection arrangements;
- cooperate in fulfilling any requirements imposed for the protection of health and safety, and in enabling the employer to ensure that the working environment and working conditions are safe and pose no risks.

The health of workers is monitored through the application of measures introduced in accordance with national laws and practices. Particularly sensitive risk groups must be protected against the dangers which specifically affect them.

See **Health and safety at work; Occupational health services (ILO); Occupational safety and health (ILO).**

Hidden unemployment

Those who are unemployed but who do not meet the requirements of national systems of unemployment registration (requirements which may exclude women in particular).

Hierarchy of Community Acts (hierarchy of norms)

A declaration annexed to the Treaty on European Union, which came into force in 1993, states that “it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act”.

The main purpose of such a hierarchy would be to enable the law-making authority to concentrate on policy aspects of particular issues rather than on questions of detail. It would dictate the shape of the Community decision-making process by ensuring that instruments of constitutional status were subject to more restrictive procedures (such as adoption by unanimous vote, augmented qualified majority, and assent) than legislative instruments, which are themselves subject to less flexible procedures (for example, the co-decision procedure) than implementing instruments (for instance, the institutionalized delegation of powers to the Commission). The subject was addressed in 1990 during the early discussions on the possibility of incorporating the co-decision procedure into the Treaty. The underlying idea was to avoid an over-rigorous procedure being applied to certain acts of secondary importance and thereby prevent the legislative machinery becoming congested. In 1991, during the negotiations on the Treaty of Maastricht, the Commission proposed introducing a hierarchy of norms and a new system for classifying Community instruments (treaties, laws, secondary or implementing acts), but failed to overcome the problems posed by the different national legal traditions. The subject has been

raised again in the European Convention, which was set up in December 2001 with the task of drafting a constitution for Europe. With the signatory in October 2004 of the Treaty establishing a Constitution for Europe, we have a pyramid of Community acts that simplify the overlapping series of European Treaties and Protocols.

Holidays with pay

ILO Convention No. 132 (1970) (revised) concerns annual paid holidays of three weeks or more. The duration of the annual holiday shall be specified by each ILO Member State at the moment of ratification, but it shall be a minimum of three weeks for one year of service. The length of the holiday can be extended by further declarations. For service of less than 12 months, a holiday with pay proportionate to that length of service shall be granted, but a minimum period of six months' service may be required. Absences due to illness, injury, maternity, or other reasons beyond the control of the employed person shall be counted as part of the period of service. Public and customary holidays shall not be counted as part of the minimum annual holiday with pay. Under conditions to be determined at national level, periods of incapacity for work resulting from sickness or injury may not be counted as part of the minimum annual holiday.

The Convention also has provisions regarding the remuneration of the worker while on holiday. It provides for the possibility of dividing the annual holiday into parts, one of which will normally consist of two uninterrupted working weeks. This period of holiday shall be taken no later than one year from the end of the year in respect of which the holiday entitlement arises, and the remainder no later than 18 months from the same date. A longer postponement is authorized within certain limits and with the consent of the employed person concerned. In fixing the time for the holiday, account shall be taken of work requirements and of the opportunities for rest and relaxation available to the employed person. Upon termination of employment, an employed person having completed at least six months' service shall receive a holiday with pay proportionate to the length of service for which a holiday has not been taken, or compensation in lieu thereof or the equivalent holiday credit. The Convention provides that agreement to relinquish the right to the minimum annual holiday with pay or to forgo such a holiday, for compensation or otherwise, shall be null and void (or be prohibited). It authorizes each State to adopt special rules in respect of cases in which the employed person engages, during the holiday, in a gainful activity conflicting with the purpose of the holiday.

The Convention provides that measures shall be taken to ensure the proper application and enforcement of provisions concerning holidays with pay, by means of adequate inspection or otherwise. Its provisions shall be given effect by national laws or regulations, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards, court decisions or in such

other manner consistent with relational practice as may be appropriate under national conditions. The Convention applies to all employed persons with the exception of seafarers and limited categories of persons who may be excluded under certain conditions. However, ratifying States can accept separately obligations in respect of employed persons in economic sectors other than agriculture, and in respect of persons employed in agriculture.

Home work

ILO Convention No. 177 (1996) concerns work carried out by homeworkers:

- The term “home work” means work carried out by a person, to be referred to as a homeworker,
 - in his/her home or in other premises of his/her choice, other than the workplace of the employer;
 - for remuneration;
 - which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions.
- Persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces.
- The term “employer” means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his/her business activity.

Each Member State shall promote the national policy on home work with a view to reaching equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise. Equality of treatment shall be promoted, in particular, in relation to:

- the homeworkers’ right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
- protection against discrimination in employment and occupation;
- protection in the field of occupational safety and health;

Glossary of labour law and industrial relations

- remuneration;
- statutory social security protection;
- access to training;
- minimum age for admission to employment or work; and
- maternity protection.

Horizontal segregation

The concentration of women and men into particular sectors and occupations.

Hours of work needs, aims and norms

The national and international economic circumstances in which working time is fixed have evolved considerably over the years. From the point of view of employers and their organizations, it has become all the more essential in a period of recession to maintain and increase competitiveness and productivity: to do this they consider that a high degree of flexibility is required as regards working time so that the undertaking can make the most effective use of plant and machinery, and adapt quickly to market fluctuations. From the point of view of workers and their organizations, there is an overwhelming requirement of higher levels of employment in the very many countries where unemployment has risen to high levels, coupled with claims for greater flexibility in working hours, so that individual aspirations can be better accommodated in the distribution and reduction of weekly and annual working time. As regards the need for flexibility, the approach, particularly in the more recent international instruments, has been one of allowing a great deal of room for national conditions and practice and the circumstances governing different activities, while at the same time laying down minimum standards or longer-term goals that are considered appropriate, for the mass of the working population.

In this context, the instrument of a general scope which the Governing Body of the ILO has placed among those to be promoted on a priority basis is the Reduction of Hours of Work Recommendation, 1962 (No. 116). The principle of the progressive reduction of hours of work is set out in this Recommendation as follows: normal hours of work shall be progressively reduced when appropriate with a view to attaining the social standard of the 40-hour week without any reduction in the wages of the workers as at the time hours of work are reduced. In the achievement of the aim of the 40-hour week, the Recommendation sets a first immediate objective: where the duration of the normal working week exceeds 48 hours, immediate steps should be taken to bring it down to this level without any reduction in the wages of the workers as at the time hours of work are reduced.

Recommendation No. 116 complements existing international instruments on hours of work and indicates measures to facilitate their application, taking

account of the variety of economic and social conditions and national practices. It also points out the principle set out in the Forty-Hour Week Convention, 1935 (No. 47), as a social standard to be reached by stages if necessary and defines the maximum limit to normal hours of work pursuant to the Hours of Work (Industry) Convention, 1919 (No. 1). Each ILO Member State should promote the adoption of the principle of the progressive reduction of normal hours of work. Furthermore, each State should, in so far as is consistent with national conditions and practice, ensure the application of this principle. Appropriate measures of supervision, including inspection, are recommended.

The national policy envisaged by Recommendation No. 116 may take many forms, since it is designed to promote the principle of the progressive reduction of normal hours of work by methods “appropriate to national conditions and practice and to conditions in each industry”. While there may be no formal declaration, a national policy on the reduction of hours of work can be deduced from all measures taken in this field through legislation or collective agreements or other measures, or even from a deliberate non-intervention by the government in the process of fixing hours of work. While such a policy may seem more directly relevant to those countries where the maximum limits set to normal hours of work are relatively high, either in general or in certain activities, a significant number of indications show none the less that the reduction of hours of work continues to be a major social objective.

There are even several cases of countries in which national policy has continued to promote further improvements in terms of a general continuing reduction below 40 hours (for instance through collective bargaining), e.g. by means of flexible hours. Whatever the position, in many countries hours of work, and working time in general, are the subject of active debate on the question of what national policy should be.

See Working time (ILO); Working time (organization of).

Human resources development

ILO Convention No. 142 (1975) concerns the development of policies and programmes of vocational guidance and vocational training, closely linked with employment. The Convention provides that the ratifying ILO Member State shall adopt and develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training closely linked with employment, in particular through public employment services. It specifies the elements that these policies and programmes shall take into account (employment needs and opportunities, the stage and level of a country’s development and other economic, social and cultural objectives), their aims (improving the abilities of the individual), the principles to be followed (without any discrimination) and the educational and training systems to be developed.

See Employment and human resources development; Professional training; Vocational training.

Human rights

This issue has become increasingly important in debates over the role and future of the European Union (EU) since reference to respect for fundamental rights was included in the Treaty on European Union (TEU) in 1993 and later expanded by the Treaty of Amsterdam (1997), which declared the EU to be founded on respect for human rights and fundamental freedoms. The rights themselves are not explicitly listed anywhere in the EU's treaty base. Instead, reference is made to the European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms), adopted by the Council of Europe in 1950, and to the constitutional traditions of the EU Member States. This has not prevented the drawing up in 2000 of a Charter of Fundamental Rights of the European Union. Nor has it prevented the EU in its external relations from making respect for human rights a precondition for closer ties and, indeed, membership. The EU has not, however, signed the European Convention on Human Rights, the European Court of Justice ruling in 1996 that it did not have the competence to do so. That human rights enjoy an increasingly higher profile in the EU is underlined by the fact that a Member State's suspected breach of them may be investigated. Ultimately its voting rights, as well as other rights deriving from the TEU and Treaty of Rome (1957), may be suspended where a serious and persistent breach is confirmed.

The case law of the Court of Justice of the European Union recognizes the principles laid down in the European Convention on Human Rights. This respect for human rights was confirmed by the Member States in the preamble to the 1986 Single European Act and later incorporated into Article 6 (former Article F) of the TEU, which is based on the above Convention and the shared constitutional traditions of the Member States. The guarantee of respect for fundamental rights has been further strengthened by the Treaty of Amsterdam, which has extended the jurisdiction of the Court of Justice to cover respect for the rights deriving from Article 6 with regard to action by the EU institutions.

See **Charter of Fundamental Rights of the European Union; European Convention on Human Rights (ECHR).**

Hygiene (commerce and offices)

ILO Convention No. 120 (1964) concerns the respect of elementary hygiene measures in all commercial and administrative establishments. All commercial and administrative premises used by workers, and the equipment of such premises, shall be properly maintained and kept clean. The Convention provides general rules for ventilation, lighting (preferably natural), temperature, noise, washing and other facilities, sanitary conveniences, first aid, and so on, and refers to Recommendation No. 120 for greater detail.

See **Occupational health services (ILO); Occupational safety and health (ILO).**

Illegal work

Work performed by people who do not have a legal work permit.

ILO Constitution

The ILO Constitution was written between January and April 1919 by the Commission on International Labour constituted by the Treaty of Versailles. The Commission was composed of representatives from nine countries (Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States), under the chairmanship of Samuel Gompers, Head of the American Federation of Labour (AFL). It resulted in a tripartite organization, the only one of its kind bringing together representatives of governments, employers and workers in its executive bodies. The ILO Constitution became Part XIII of the Treaty of Versailles. The Preamble of the ILO Constitution opens with the affirmation that “universal and lasting peace can be established only if it is based on social justice”. These ideals were further clarified in the Declaration of Philadelphia (1944).

See Declaration of Philadelphia.

Incorporation of the Community *acquis*

The Essen European Council (December 1994) called on the Commission to present a White Paper on the preparation of the associated countries of Central and Eastern Europe for integration into the European Union’s internal market. The White Paper, which was presented at the Cannes European Council in June 1995, contained an indicative programme for the alignment of the Central and Eastern European countries’ legislation with that of the internal market. It provided that these countries would establish priorities in order to incorporate the Community rules and that they would be helped in this work by a technical assistance office (TAIEX), particularly in order to obtain information on Community legislation.

The incorporation and implementation of all Community legislation were the main challenges faced by the applicant countries. They required the administrations and the legal systems to be strengthened, and the infrastructure of the applicant countries to be drastically adapted to conform to Community standards, particularly on environmental questions, transport, energy and

telecommunications. To facilitate these considerable adjustments, pre-accession aid was provided to the applicant countries. The accession negotiations for the applicant countries began in March 1998. The first step was to evaluate each applicant country's legislation for compatibility with the Community rules (screening process). This evaluation then constituted the basis for the second stage, bilateral negotiations between the Union and each applicant. In some areas, the applicant countries were granted transition periods between their accession and the time when they are capable of fully implementing the Community *acquis*. However, any such transition periods are limited in their scope and duration, and subject to very strict conditions.

See **Accession criteria**; **Accession negotiations of the European Union**; ***Acquis communautaire***.

Incorporation of the Social Policy Agreement

The Treaty of Maastricht (1992) had taken social policy one step forward with the adoption of the Protocol on Social Policy, signed by the 12 countries that were Member States at the time and annexed to the Treaty on European Union, noting that 11 Member States (all except the United Kingdom) wished to continue to make significant progress in this field. The Protocol authorized them, by means of an Agreement on social policy, "to have recourse to the institutions, procedures and mechanisms of the Treaty for the purposes of taking among themselves and applying as far as they are concerned the acts and decisions required for giving effect to the above mentioned Agreement".

However, it was not very satisfactory to have two legal bases for social policy. The Treaty of Amsterdam (1993) restored unity and coherence to social policy by incorporating into the Treaty establishing the European Community (TEC) the Agreement referred to above (see Articles 136 to 145; new Articles III-103 to 112). Article 136, TEC, confirms that social policy falls under the joint responsibility of the European Community and the Member States. The objectives of social policy are set out, following the example of the European Social Charter signed at Turin on 18 October 1961 (amended in 1996) and of the Community Charter of the Fundamental Social Rights of Workers of 1989. These objectives are the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion (formerly Article 1 of the Agreement). Article 137, TEC (ex-Article 2 of the Agreement) provides that the Council may first of all, by adopting directives by qualified majority in co-decision with Parliament and after consulting the Economic and Social Committee and the Committee of the Regions, act or reinforce its action in the following areas:

- workers' health and safety;
- working conditions;
- the integration of persons excluded from the labour market;
- the information and consultation of workers;
- equality between men and women with regard to labour market opportunities and treatment at work.

Under the same procedure, the Council may also adopt measures designed to encourage the combating of social exclusion. However, unanimity in the Council remains the norm in the following areas:

- social security and social protection of workers;
- protection of workers where their employment contract is terminated;
- representation and collective defence of the interests of workers and employers, including co-determination subject to paragraph 6;
- conditions of employment for third-country nationals legally residing in Community territory;
- financial contributions for promotion of employment and job creation.

As for pay, the right of association, the right to strike and the right to impose lockouts, they are still excluded from Community competence (paragraph 6).

The Treaty of Amsterdam confirms the recognition, already introduced by the Single Act, of the key role of the social partners. This recognition takes effect at two levels:

- at national level, since Member States may entrust management and labour with the implementation of the aforementioned directives (Article 137.4 TEC);
- at Community level, since the Commission has the task of promoting the consultation of management and labour and taking relevant measures to facilitate their dialogue by ensuring balanced support for the parties (Article 138.1, ex Article 3.1 of the Agreement).

See Social Policy Agreement; Social Policy Protocol.

Individual bargaining

Negotiations which take place between a single worker and his/her employer. Issues negotiated in this way can vary from individual wages to promotion and individual leave or working hours. Traditionally trade unions are opposed to individual bargaining.

Glossary of labour law and industrial relations

Individual rights

Rights that accrue directly to an individual, as opposed to derived rights. An aim of judicial cooperation between the EU Member States is that individual citizens have their rights guaranteed, no matter which State they move to or live in.

Individualization of rights

This refers to developing taxation and social security systems whereby rights accrue directly to the individual.

Industrial action

Any form of action threatened or taken by a party in order to protect or promote its interests, which may lead to disruption in production. Industrial action can either be overt (e.g. strike or lock-out) or covert (e.g. sabotage), organized or unorganized, individual or collective.

See **Lock-out; Strike.**

Industrial conflict

Disagreement between labour and management expressed through behaviour such as sabotage, absenteeism and strikes. These specific actions can be distinguished according to their form (organized or unorganized) and to the party involved.

Industrial dispute

Disagreement between labour and management arising from the inability of both parties to resolve their differences. An industrial dispute may result in conflicts such as a strike. The subject matter of a particular dispute may determine whether the dispute is within the scope of industrial legislation and the jurisdiction of a third party (e.g. an industrial tribunal) empowered to assist the parties in resolving the issue(s) concerned by conciliation, mediation and/or arbitration.

See **Arbitration; Conciliation; Mediation.**

Industrial relations

The individual and collective relations between workers and employers at work and arising from the work situation, as well as the relations between representatives of workers and employers at the industry and national levels, and their interaction with the State. Such relations encompass legal, economic, sociological and physiological aspects, and include the following issues: recruiting, hiring, placement, training, discipline, promotion, lay-off, termination, wages, overtime, bonus, profit sharing, education, health, safety, sanitation, recreation, housing, working hours, rest, vacation, and benefits for unemployment, sickness, accidents, maternity, old age and disability.

Industry-wide bargaining

Any form of collective bargaining that takes place between trade unions and employers' organizations for the purpose of establishing, standardizing or changing employment conditions that will have a broad coverage within an industry.

See **Collective bargaining.**

Informal economy/informal work

Paid or unpaid economic activities carried out for the direct benefit of the household, or of relatives' and friends' households on a reciprocal basis, including everyday domestic work and a great variety of self-provision activities and/or professional activities. These may be performed as a sole or secondary occupation, exercised gainfully and not occasionally, or only marginally so, in fulfilment of any statutory, regulatory or contractual obligations. However, the concept excludes those informal activities that are also part of the criminal economy.

Information and consultation (collective redundancies)

According to European legislation, when an employer is contemplating collective redundancies, he/she shall begin consultations with the workers' representatives in good time, with a view to reaching an agreement. These consultations shall, at a minimum, cover possible ways and means of avoiding collective redundancies or of reducing the number of workers affected, as well as mitigating the consequences of redundancies through recourse to accompanying social measures, such as aid in redeploying or retaining the workers made redundant. European Union (EU) Member States may allow the workers' representatives to call upon the services of experts in accordance with national legislation and/or practice. In order to enable the workers' representatives to make constructive proposals, the employers shall supply them in good time during the course of consultations with all relevant information and shall notify them in writing of the:

- reasons for the projected redundancies;
- number of categories of workers to be made redundant;
- number and categories of workers normally employed;
- period over which the projected redundancies are to be effected;
- criteria proposed for the selection of the workers to be made redundant, insofar as national legislation and/or practice confers the power therefore to the employer;
- method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

Glossary of labour law and industrial relations

The employer shall forward to the competent public authority a copy of, at least, the elements listed above. The above-mentioned obligations shall apply irrespective of whether the decision regarding collective redundancies is taken by the employer or by an undertaking controlling the employer. In considering alleged breaches of the information, consultation and notification requirements laid down by EU labour law, account shall not be taken of any defence on the part of the employer on the grounds that the necessary information has not been provided to the employer by the undertaking that took the decision leading to collective redundancies. (See Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.)

See **Collective redundancies; Procedures for collective redundancies.**

Information and consultation of employees

General framework. Directive 2002/14/EC of 11 March 2002 established a general framework for informing and consulting employees in the European Community, pursuant to the Commission Communication of 14 November 1995, in order to fill the gaps and counter the shortcomings in the provisions in force at national and Community levels. The Directive defines the terms “undertakings”, “employer”, “employees’ representatives”, “information” and “consultation”. Particular provisions applicable to undertakings that pursue directly and essentially political, professional organization, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, may be adopted on condition that, at the date of adoption of the Directive, such particular provisions already exist in national legislation. European Union (EU) Member States may authorize the social partners to define freely, through agreement, the procedures for implementing the employee information and consultation requirements referred to in the Directive. Employee information and consultation covers three areas in relation to undertakings:

- economic, financial and strategic developments;
- structure and foreseeable development of employment and related measures;
- decisions likely to lead to substantial changes in work organization or contractual relations.

EU Member States must establish the procedures for applying the principles set out in the Directive, with a view to ensuring the effective application of employee information and consultation. They also have the option of limiting the information and consultation obligations of undertakings with fewer than 50 or 20 employees according to the Member State’s discretion.

Confidentiality arrangements are included:

- experts and employees' representatives must not disclose any information that has expressly been provided to them in confidence, even after expiry of their term of office;
- within conditions laid down by national legislation, the employer may be exempted from his/her information and consultation obligation where complying with it would seriously harm the functioning of the undertaking or would be prejudicial to it.

When carrying out their functions, employees' representatives must enjoy adequate protection and guarantees to enable them to perform their duties. The Directive makes the EU Member States responsible for ensuring compliance with its provisions (through adequate administrative or judicial procedures at national level). The following are regarded as serious breaches of the obligations laid down in the Directive:

- total absence of information and/or consultation of the employees' representatives prior to a decision being taken or the public announcement of such decision;
- withholding of important information or provision of inaccurate information rendering ineffective the exercise of the right to information and consultation.

In the event of a serious breach with direct and immediate consequences in terms of substantial change or termination of employment contracts or relationships, the decisions taken have no legal effect. This situation continues until such time as the employer has fulfilled the information and consultation obligations. If this is no longer possible, the employer must establish adequate redress in accordance with the arrangements and procedures in place in the Member States. The provisions of the Directive do not prejudice Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Transfer of undertaking. According to EU legislation, in case of the transfer of an undertaking, business or part of business, the transferor and the transferee are required to inform the representatives of their respective workers affected by the transfer on the following: the reasons for the transfer; the legal, economic and social implications for the workers of the transfer; and measures envisaged in relation to the workers. The transferor must give such information to the representatives of his/her workers in good time before the transfer is carried out. The transferee must give such information to the representatives of his/her workers in good time, and in any event before the workers are directly affected by the transfer as regards their conditions of work and employment. If the

Glossary of labour law and industrial relations

transferor or the transferee envisages measures in relation to his/her workers, he/she shall consult the representatives of the workers in good time on such measures with a view to seeking agreement.

EU Member States whose laws, regulations or administrative provisions provide that representatives of the workers may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to workers may limit the obligations mentioned above to cases where the transfer gives rise to a change in business likely to entail serious disadvantages for a considerable number of workers. The information and consultations shall cover at least the measures envisaged in relation to the workers. The information must be provided and consultations must take place in good time before the change in the business is effected. There is also a possibility that where there are no representatives of the workers in an undertaking or business, the workers concerned must be informed in advance when a transfer is about to take place. (See Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.)

See **Transferor's rights; Transfer of undertaking (safeguarding of employees' rights).**

Information and consultation in Community-scale undertakings *see* **European Works Council.**

Information of employees in a European Company

Within the Statute of a European Company, with the Latin name *Societas Europaea* (SE), this refers to the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the Company itself, and any of its subsidiaries or establishments situated in another European Union Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content that allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE (See Directive 2001/86/EC of 8 October 2001 supplementing the Statute for an European Company with regard to the involvement of employees).

See **Consultation of employees in a European Company; Statute for a European Company.**

Information sharing

The regular and systematic provision by management of accurate and comprehensive information to workers on a range of personnel, financial, industrial and organizational matters. Information sharing is a precondition to workers' participation in decision-making.

Insolvency of the employer

EU Directive 80/987/EEC, amended by Directive 2002/47/EC, will guarantee payment of outstanding claims to employees in the event of insolvency of their employer. The Directive applies to employees' claims arising from contracts of employment or work relations and existing against employers who are in a state of insolvency within the meaning of the Directive. It does not prejudice national law as regards the definition of the terms "employee", "employer", "pay", "right conferring immediate entitlement" and "right conferring prospective entitlement". Member States may, by way of exception, exclude claims by certain categories of employee. (See Directive 80/987/EC of 20 October 1980, on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer; amended by Directive 2002/47/EC of 23 September 2002.)

See **Guarantee institutions (employer's insolvency); Insolvency (state of); Protection of workers' claims (employer's insolvency).**

Insolvency (state of)

According to European Union (EU) legislation, an employer shall be deemed to be in a state of insolvency under the following conditions:

- where a request has been made for the opening of proceedings involving the employer's assets, as provided for under the laws, regulations and administrative provisions of the EU Member States concerned, to satisfy collectively the claims of creditors and make it possible to take into consideration employees' claims arising from contracts of employment or employment relationships, and existing against employers who are in a state of insolvency; and
- where the authority that is competent pursuant to the said laws, regulations and administrative provisions has either decided to open proceedings, or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings. (See Directive 80/987/EEC of 20 October 1980, amended by Directive 2002/47/EC of 23 September 2002.)

See **Guarantee institutions (employer's insolvency); Insolvency of the employer; Protection of workers' claims (employer's insolvency).**

Intergovernmental Conference (IGC)

This term is used to describe negotiations between the European Union (EU) Member States' governments with a view to amending the Treaties. Intergovernmental conferences play a major part in European integration, since institutional changes must always be the outcome of such negotiations. These

Glossary of labour law and industrial relations

conferences are convened, at the initiative of a Member State or the Commission, by the Council of Ministers acting by a simple majority (after consulting the European Parliament and, if appropriate, the Commission). The preparatory work is entrusted to a group consisting of a representative of each of the Member States' governments and, as a matter of custom, a representative of the Commission. The European Parliament is closely involved throughout by means of observers and discussions with the President of the Parliament. This group regularly reports to the General Affairs Council. The final decisions are taken by the heads of state and government at a European Council.

The most important IGCs in recent years have resulted in the following treaties:

- the *Single European Act* (1986): this introduced the changes needed to complete the internal market on 1 January 1993;
- the *Treaty of Maastricht* (1992): the Treaty on European Union was negotiated at two separate IGCs, one on economic and monetary union (EMU) and the other on political union, instituting the common foreign and security policy (CFSP) and cooperation on justice and home affairs (JHA);
- the *Treaty of Amsterdam* (1997): this is the result of the IGC launched at the Turin European Council in March 1996. The task of the Conference was to revise those provisions of the Maastricht Treaty that gave rise to problems of implementation and to prepare for future enlargement.

Since the Treaty of Amsterdam did not introduce all the institutional reforms needed to ensure that the institutions would function efficiently after enlargement, the Cologne European Council (June 1999) decided that a new IGC should be convened in 2000 to address the issues not resolved in the Treaty of Amsterdam.

These were:

- the size and composition of the Commission;
- the weighting of votes in the Council;
- the possible extension of qualified majority voting in the Council.

The Santa Maria de Feira European Council in June 2000 extended the remit of the IGC to include "closer cooperation". The new IGC was launched on 15 February 2000 after formal consultation of the Commission and the European Parliament. It was concluded at the Nice European Council (December 2000) and gave rise to the treaty of the same name signed on 26 February 2001. A declaration on the future of the Union annexed to the Treaty of Nice refers to a new IGC, which was held in 2004 following a broad public debate and preparation by a Convention on institutional reform.

See **European Convention; Treaties.**

International Confederation of Free Trade Unions (ICFTU)

The ICFTU was created in 1949 and has 234 affiliated organizations in 152 countries and territories on all five continents, with a membership of 148 million workers. It has three major regional organizations: APRO for Asia and the Pacific; AFRO for Africa; and ORIT for the Americas. It also maintains close liaison with the European Trade Union Confederation (ETUC) – which includes all ICFTU European affiliates – and global union federations, which link together national unions from a particular trade or industry at international level. It cooperates closely with the International Labour Organization. It has consultative status with the United Nations Economic and Social Council, and maintains contacts with the International Monetary Fund, the World Bank and the World Trade Organization. The five main priorities for action are: employment and international labour standards; tackling the multinationals; trade union rights; equality, women, race and migrants; and trade union organization and recruitment. It publishes annually a Survey of Trade Union Rights, which gives details on violations of basic trade union rights.

See European Trade Union Confederation (ETUC).

International Court of Justice

The principal judicial organ of the United Nations. Its two functions are to settle legal disputes between States and to give advisory opinions on legal questions submitted by authorized international organizations and agencies, all of them being United Nations agencies. The sources of law used by the Court include international treaties and conventions, international custom, general principles of law and judicial decisions. The Court was established in 1946 as the successor to the Permanent Court of International Justice. It is located at The Hague.

International division of labour

The arranging of production processes to promote ever greater specialization of labour, economies of scale and standardized products. Its aim is to enable firms to compete through the price mechanism. The international division of labour was originally based on the analogy of dividing the manufacture of a product in such a way that the greatest possible part of it could be produced by cheaper unskilled and semi-skilled labour, but the complexity of many products now produced and traded internationally has greatly undermined this rationale.

See Globalization; Globalization of the economy.

International Labour Conference

The International Labour Conference, which provides an international forum for discussion of world social and economic problems and international labour standards, sets the broad policies of the International Labour Organization (ILO). The Conference meets in June every year, in Geneva. Delegates are

Glossary of labour law and industrial relations

accompanied by technical advisors. Ministers responsible for labour affairs in their countries attend the Conference and take the floor. Employer and worker delegates can express themselves and vote independently of their governments. They may well vote against their government representatives, as well as against each other. Every two years, the Conference adopts the biennial work programme and budget of the International Labour Office, which is financed by Member States. Between annual sessions of the Conference, the work of the ILO is guided by the Governing Body, comprising 28 government members, and 14 worker and employer members. This executive council of the ILO meets three times a year in Geneva. It takes decisions on action to give effect to ILO policy, prepares the draft programme and budget, which it then submits to the Conference for adoption, and elects the Director-General.

Ten of the government seats are permanently held by States of chief industrial importance (Brazil, China, France, Germany, India, Italy, Japan, Russian Federation, United Kingdom, United States). Representatives of other member countries are elected by the government delegates at the Conference every three years, taking into account geographical distribution. The employers and workers elect their own representation in separate electoral colleges.

See International Labour Office; International Labour Organization; International labour standards.

International Labour Office (ILO)

The International Labour Office in Geneva is the permanent secretariat of the International Labour Organization, its operational headquarters, research centre and publishing house. Administration and management are decentralized in regional, area and branch offices. Under the leadership of a Director-General, who is elected for a five-year renewable term, the Office employs some 2,500 officials at its Geneva headquarters and in more than 40 field offices around the world.

See International Labour Conference; International Labour Organization.

International Labour Organization (ILO)

The International Labour Organization was established in 1919 as part of the Treaty of Versailles. It became a United Nations specialized agency in 1946. Its objectives are to improve working and living conditions through the adoption of Conventions and Recommendations setting minimum standards for wages, hours of work, conditions of employment, social security, labour administration, tripartite cooperation, industrial relations, social dialogue, etc.

See International Labour Conference; International Labour Office; International labour standards; Tripartism.

International labour standards

Since 1919, the International Labour Organization (ILO) and its tripartite structure, encompassing governments of Member States and employers' and

workers' organizations, have built up a system of international standards in all work-related matters. These ILO standards take the form of international labour Conventions and Recommendations. Conventions are international treaties, subject to ratification by Member States. Recommendations are non-binding instruments – often dealing with the same subjects as Conventions – which set out guidelines orienting national policy and action. Both forms are intended to have a concrete impact on working conditions and practices around the world.

By 1 January 2005, the ILO had adopted 185 Conventions and 195 Recommendations covering a broad range of subjects: freedom of association and collective bargaining; tripartite consultation; equality of treatment and opportunity; abolition of forced and child labour; employment promotion and vocational training; social security; conditions of work; labour administration and labour inspection; prevention of work-related accidents; maternity protection; and the protection of migrants and other categories of workers such as seafarers, nursing personnel or plantation workers. More than 7,000 ratifications have been registered so far.

International labour standards play an important role in the elaboration of national laws, policies and judicial decisions, and in the provisions of collective agreements. Whether or not a country has ratified a particular Convention, the standards provide guidance for the operation of national labour institutions and mechanisms, and sound labour and employment practices. Thus, international labour standards have an impact on both national law and national practice, which goes well beyond simply adapting legislation to the requirements of a ratified Convention.

The application of international labour standards is subject to constant supervision by the ILO. Each Member State is required to present periodically a report on the measures taken, in law and practice, to apply each Convention it has ratified. At the same time, it must send copies to employers' and workers' organizations, which also have a right to submit information. The Government's reports are first examined by the Committee of Experts on the Application of Conventions and Recommendations, a body of 20 eminent figures in the legal and social fields who are independent of governments and appointed in their personal capacity. The Committee submits an annual report to the International Labour Conference, where it is closely examined by the Conference Committee on the Application of Conventions and Recommendations, a tripartite committee of government, employer and worker members.

In parallel with these regular supervisory mechanisms, employers' and workers' organizations can initiate contentious proceedings, called "representations", against a Member State for its alleged non-compliance with a Convention it has ratified. If the representation is judged receivable by the ILO Governing Body, it appoints a tripartite committee to study the question. This committee subsequently submits a report containing its conclusions and recommendations to the Governing Body.

Glossary of labour law and industrial relations

Moreover, any Member State can lodge a complaint with the International Labour Office against another Member State which, in its opinion, has not ensured in a satisfactory manner the implementation of a Convention which both of them have ratified. The Governing Body has the option to establish a Commission of Inquiry to study the question and present a report on the subject. This process may also be set in motion by the Governing Body itself or following a complaint by a delegate to the International Labour Conference. If necessary, the Commission of Inquiry formulates recommendations on measures to be taken. If governments do not accept these recommendations, they may submit the question to the International Court of Justice.

A special procedure in the field of freedom of association was set up by the ILO in 1950. It is based on complaints submitted by governments or by employers' or workers' organizations against a Member State even if it has not ratified the relevant Conventions. This is possible because, by becoming a Member of the ILO, a State has to comply with the principle of freedom of associations laid down in the Constitution of the Organization itself. The machinery set up in this field comprises two different bodies. One is the Fact-finding and Conciliation Commission, which requires the consent of the government concerned. The Commission's procedure is comparable to that of a Commission of Inquiry and its reports are published. Six such commissions have been established.

The second of these bodies is the Committee on Freedom of Association. This tripartite Committee is appointed by the ILO Governing Body from among its own members. Since it was first established, the Committee has dealt with more than 2,200 cases covering a wide range of aspects of freedom of association: arrest and disappearance of trade unionists; intervention in trade union activities; legislation not in conformity with freedom of association principles, and so on. The Committee meets yearly in March, May and November in Geneva.

See International Labour Conference; International Labour Office; International Labour Organization; Tripartism.

International Organisation of Employers (IOE)

The IOE was created in 1920. It is recognized as the only organization at the international level that represents the interests of business in the labour and social policy fields. Today it consists of 136 national employer organizations from 132 countries from all over the world. Its mission is to promote and defend the interests of employers in international fora, especially in the International Labour Organization (ILO). To this end, it works to ensure that international labour and social policy promotes the viability of enterprises and creates an environment favourable to enterprise development and job creation. At the same time, the IOE acts as the Secretariat to the Employers' Group at the ILO

International Labour Conference, the ILO Governing Body and all other ILO-related meetings.

See **International Labour Organization; International Labour Conference.**

Invisible barriers

Attitudes and the underlying traditional assumptions, norms and values that prevent (women's) empowerment or full participation in society.

Involvement of employees in a European Company

According to the Statute of a European Company, this refers to any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company. (See Article 2, Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees.)

See **Consultation of employees in a European Company; Information of employees in a European Company; Statute for a European Company.**

Irregular and/or precarious employment

Employment that is casual and generally not the subject of a proper contract or governed by any pay or social protection regulations.

J

Job segregation/employment segregation

The concentration of women and men in different types and levels of activity and employment, with women being confined to a narrower range of occupations than men (horizontal segregation), and to lower grades of work (vertical segregation).

Job sharing

This denotes a single job, including its remuneration and conditions, shared by two (typically) or more people working according to an agreed pattern or roster.

Joint decision-making

A process whereby management and workers' representatives jointly consider and take decisions on matters of common interest.

Labour administration

ILO Convention No. 150 (1978) aims at establishing an effective labour administration with the participation of employers and workers and their organizations. The ratifying ILO Member State shall organize an effective system of labour administration, the functions and responsibilities of which are properly coordinated. It shall secure, within this system, consultation, cooperation, and negotiation with employers' and workers' organizations.

The Convention sets out the functions of labour administration (preparation, administration, coordination, checking and review of national labour policy, preparation and implementation of laws and regulations, tasks in relation to national employment policy, conditions of work and working life, terms of employment, services and advice to employers and workers and their organizations, representation of the State concerning international labour affairs, etc.). The staff of the labour administration system shall be composed of persons who are suitably qualified and independent of improper external influences. They shall have the status, the material means and the financial resources necessary for the effective performance of their duties. The extension of labour administration services to cover workers who are not, in law, employed persons is to be promoted.

Labour clauses (public contracts)

ILO Convention No. 94 (1949) aims to ensure minimum labour standards in the execution of public contracts. The Convention deals with all contracts involving the expenditure of public funds awarded by central public authorities to another party employing workers for construction, demolition and so on, of public works, the manufacture of materials, supplies or equipment, or the performance or supply of services.

The Convention also applies to work carried out by subcontractors. Exemptions are authorized for contracts not exceeding an amount fixed after consultation with the organizations of employers and workers concerned. Public contracts shall include clauses ensuring to the workers wages (including allowances), hours of work and other conditions of labour that are not less favourable than those established for work of the same character by national laws or regulations, collective agreements or arbitration awards. The Convention provides for measures to ensure fair and reasonable conditions of health, safety

Glossary of labour law and industrial relations

and welfare for the workers concerned. It calls for the publication of texts giving effect to its provisions, for a system of inspection, for sanctions (such as the withholding by public authorities of contracts for failure to observe and apply labour clauses in public contracts) and for measures enabling the workers concerned to obtain the wages to which they are entitled (notably by the withholding of payments due to the employer under the terms of the public contract by the authorities). In cases of force majeure, or in the event of emergency endangering national welfare or safety, the operation of provisions of the Convention may be temporarily suspended after consultation with the organizations of employers and workers concerned.

Labour inspection

ILO Convention No. 81 (1947) aims to secure, by regular inspections of workplaces, the enforcement of legal provisions for the protection of workers. Convention No. 81 provides for a system of labour inspection to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers in industrial workplaces, as well as in commercial workplaces if the ratifying ILO Member State accepts this extension.

The Convention deals with the organization and functioning of inspection services, the responsibilities of a central authority, their cooperation with other public and private services and with employers and workers or their organizations, the recruitment of qualified staff in sufficient numbers (including women) and with appropriate status, material means and facilities (offices and transport), the thorough regular inspection of workplaces, and the publication of reports and annual statistics on the work of the inspection services. The Convention defines the functions of labour inspectors (to secure the enforcement of the law, to advise employers and workers, and to provide information to the competent authority) and their powers (i.e. the power to freely enter any workplace liable to inspection, to carry out inquiries freely and in particular to interrogate persons, to examine documents and take samples, to give orders with a view to remedying defects and to decide whether it is appropriate to give warning and advice, or to institute or recommend proceedings). In return, inspectors are required to respect certain obligations and are prohibited from having any direct or indirect interest in the undertakings under their supervision. They shall not reveal manufacturing or commercial secrets of the workplaces they inspect or the source of any complaint.

See Senior Labour Inspectors Committee.

Labour inspection (agriculture)

ILO Convention No. 129 (1969) applies to agricultural undertakings in which employees or apprentices work, or – subject to a declaration by the ratifying ILO Member State to this effect – tenants, share-croppers and similar categories of agricultural workers, members of a cooperative or of the family of the operator. Its

provisions are to a large extent based on those of Convention No. 81 (1947) regarding the organization, the functions and the staff of the system of inspection, as well as the duties, powers and obligations of the inspectors.

Convention No. 129 also contains certain innovations that take into account the special characteristics of the agricultural sector and the experiences gained since Convention No. 81 came into force. These innovations take the form of provisions on questions such as the organizational flexibility and structure of the inspection services, the extension to inspectors of advisory or enforcement functions regarding legal provisions relating to conditions of life of workers and their families, the possibility of including in the system of labour inspection officials or representatives of occupational organizations, and of legal bodies, and of entrusting certain inspection functions at the regional or local level to other appropriate government services or public institutions.

See Labour inspection.

Labour relations *see* **Industrial relations.**

Labour relations (public service)

ILO Convention No. 151 (1978) concerns the protection of public employees exercising the right to organize; non-interference by public authorities; negotiation or participation in the determination of terms and conditions of employment; and guarantees for settling disputes. The Convention provides, in terms analogous to those of the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), for public employees to enjoy adequate protection against acts of anti-union discrimination. Their organizations shall enjoy adequate protection against acts of interference by a public authority in their establishment, functioning and administration. Public employees' organizations shall enjoy complete independence from public authorities.

Public employees shall have the same civil and political rights as other workers that are essential to the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions. Facilities shall be afforded to the representatives of recognized public employees' organizations to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work, without impairing the efficient operation of the administration or service concerned. Measures appropriate to national conditions shall encourage and promote the negotiation of terms and conditions of employment for public employees, or such other methods as will allow their representatives to participate in the determination of these matters. The settlement of disputes shall be sought through negotiation between the parties, or through independent and impartial machinery (such as mediation, conciliation and arbitration).

See Right to organize and collective bargaining.

Glossary of labour law and industrial relations

Labour statistics

ILO Convention No. 160 (1985) aims to collect, compile and publish basic labour statistics. The ratifying State undertakes to publish labour statistics regularly. The subjects to be covered progressively include:

- the economically active population, employment, unemployment, under-employment;
- structure and distribution of the economically active population;
- average earnings, wage rates, hours of work;
- wages;
- labour costs;
- consumer price indices;
- household or family expenditure, and income;
- occupational injuries and diseases;
- industrial disputes.

Various provisions, which are of a more technical nature, specify the obligations in respect of each of these areas. However, each ratifying ILO Member State can undertake such obligations gradually and with a great deal of flexibility. The Convention provides for close cooperation with the ILO, and with representative organizations of employers and workers.

Laeken Declaration

One year after the Treaty of Nice and the Nice Declaration, which called for institutional reform to be pursued beyond the 2000 Intergovernmental Conference (IGC 2000), the Laeken European Council adopted a Declaration on the Future of the European Union (Laeken Declaration) on 15 December 2001, committing the Union to becoming more democratic, transparent and effective. This Declaration posed 60 targeted questions on the future of the Union, around four main themes: the division and definition of powers; the simplification of the treaties; the institutional set-up; and the move towards a Constitution for European citizens. In 2002 the Council convened a Convention on the Future of Europe, gathering together the main stakeholders, in order to examine the fundamental questions raised by the future development of the Union so as to prepare in as broad and transparent a way as possible for the 2004 IGC.

See **Convention on the Future of Europe; European Constitution; Subsidiarity.**

Legal personality of the European Union (EU)

The question of the legal status of the European Union (EU) arises primarily in connection with its capacity to conclude treaties or accede to agreements or

conventions. Each of the EU's three separate Communities – the European Community, the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM) – has a legal personality, while the two areas of intergovernmental cooperation do not have “a treaty-making power” – that is, the international right to conclude agreements with third countries. Discussions on the EU's legal status are therefore part of the debate on whether or not the EU should be given the tools to take more effective and coherent action in external affairs. The Treaty of Amsterdam, which entered into force in 1999, contains no new provisions on the subject, as the Member States failed to reach agreement at the Intergovernmental Conference. Some observers argue that the problem is non-existent and there is nothing to prevent the EU from concluding agreements and asserting its position on the international scene.

See **Intergovernmental Conference (IGC); Treaties.**

Lifelong learning

Following the adoption by the European Commission on 21 November 2001 of the Communication on Making a European Area of Lifelong Learning a Reality, lifelong learning has become the guiding principle for the development of education and training policy. The Communication sets out concrete proposals that aim to make lifelong learning a reality for all. Lifelong learning encompasses learning for personal, civic and social purposes as well as for employment-related purposes. It takes place in a variety of environments inside and outside the formal education and training systems. Lifelong learning implies raising investment in people and knowledge; promoting the acquisition of basic skills, including digital literacy; and broadening opportunities for innovative, more flexible forms of learning. The aim is to provide people of all ages with equal and open access to high-quality learning opportunities, and to a variety of learning experiences, throughout Europe. Education systems have a key role to play in making this vision a reality. Indeed, the Communication stresses the need for European Union Member States to transform formal education and training systems in order to break down barriers between different forms of learning.

See **European Centre for the Development of Vocational Training (CEDEFOP); Professional training; Vocational training.**

Light work

All work that is not likely to be harmful to the safety, health or development of children on account of the inherent nature of the tasks involved and the particular conditions under which they are performed. Such work is therefore considered not harmful to the attendance of children at school, their participation in vocational guidance or training programmes approved by the competent authorities, or their capacity to benefit from instruction received.

See **Child labour; Minimum age.**

Glossary of labour law and industrial relations

Living wage

The level of wages sufficient to meet the basic living needs of an average-sized family in a particular economy.

See **Equitable wages.**

Lock-out

The temporary closing down by the employer of a factory or establishment in order to compel workers to agree with the conditions dictated by the employer to force them to comply with some of its demands. The tactic is generally considered to be the managerial equivalent of a strike. During the lock-out the workers involved are not entitled to any pay since no work can be performed.

See **Industrial action; Strike.**

Maastricht Treaty *see* **Treaties**.

Maintenance of social security rights

ILO Convention No. 157 (1982) aims at establishing an international system for the maintenance of rights to medical care and sickness benefit, and maternity, invalidity, old-age, survivors, employment injury, unemployment and family benefits in respect of persons working or residing outside their country. This very technical and complex Convention seeks to promote, on a general level, wide-ranging but flexible coordination between national social security schemes, taking account of the differences in their respective levels of development. Flexibility is assured by a distinction made between provisions applicable upon ratification and obligations to which application may be given by bilateral or multilateral agreements. Certain derogations are possible, either by way of special arrangements between countries, or subject to compensatory guarantees at the date of ratification.

The Convention seeks to protect not only salaried employees and self-employed persons, within the territory of a ratifying ILO Member State, but also such other persons as the members of the families of the employees concerned. Possible benefits – payment of which is subject to appropriate reciprocity according to each case – are in respect of the nine contingencies referred to above. The Convention has provisions for adding together periods of insurance, employment, occupational activity or residence, under schemes for the maintenance of rights in course of acquisition. It also provides appropriate conditions for the maintenance of acquired rights to the various types of benefits having regard to the legislation that the countries concerned have in force for the branch concerned. Each State bound by Convention No. 157 shall guarantee the provision of invalidity, old-age and survivors' cash benefits, pensions in respect of employment injuries and death grants, to which a right is acquired under its legislation, to beneficiaries who are nationals of a State also bound by this Convention, or refugees or stateless persons, irrespective of their place of residence. The Convention also deals with administrative assistance and assistance to persons covered.

See **Social security (and free movement of workers); Social security (minimum standards)**.

Maritime labour Convention (ILO) *see* **Consolidated maritime labour Convention.**

Maternity leave

Leave to which a woman is entitled for a continuous period allocated before and/or after giving birth in accordance with national legislation and practice.

See **Maternity protection.**

Maternity protection

ILO Convention No. 183 (2000) applies to all employed women, including those in atypical forms of dependent work. However, each ILO Member State that ratifies this Convention may exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature. Each State shall adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work that has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks. The length of the period of leave shall be specified by each Member State in a declaration accompanying its ratification of this Convention. Each State may subsequently deposit with the Director-General of the ILO a further declaration extending the period of maternity leave. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave. On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

Cash benefits shall be provided in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave. Cash benefits shall be at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. The amount of such

benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary. In order to protect the situation of women in the labour market, benefits in respect of the leave shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him/her without that employer's specific agreement with some specific exceptions.

A Member State whose economy and social security system are insufficiently developed shall be deemed to be in compliance with the Convention if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.

According to Convention No. 183, it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or during a period following her return to work except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

A woman shall be provided with the right to one or more daily breaks, or a daily reduction of hours of work, to breastfeed her child. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

Mediation

Assistance provided to disputing parties by an independent third party (the mediator). In mediation the third party is more actively involved than in conciliation and attempts to suggest proposals and methods for actual resolution of the problem so that a solution acceptable to both parties can be found.

See Conciliation.

MERCOSUR (Mercado Común del Sur – Southern Common Market)

Currently a customs union covering trade in goods except sugar and cars, MERCOSUR's objectives include the free transit of all goods, services and the factors of production, and the lifting of non-tariff restrictions. It was established on 29 November 1991 through the Treaty of Asunción and amended on 17 December 1994 through the Protocol of Ouro Preto, which covers mainly institutional issues. It included Argentina, Brazil, Paraguay and Uruguay. Chile signed an association agreement on 1 October 1996, and Bolivia did so on 1 March 1997. There are plans to harmonize regulations on intellectual property rights within the area, and to have mutual recognition of university degrees. A Dispute Settlement Court has also been created. The MERCOSUR secretariat is located in Montevideo.

Migrant workers (supplementary provisions)

ILO Convention No. 143 (1975) concerns equality of opportunity and treatment, and the elimination of abuses. This Convention is in two parts, dealing respectively with migrations in abusive conditions and equality of opportunity and treatment. Each ILO Member State that ratifies it may, by a declaration appended to its ratification, exclude either one or the other part from its acceptance of the Convention.

Part I, dealing with migrations in abusive conditions, sets the general obligation to respect the basic human rights of all migrant workers. It requires of States for which it is in force to seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through, or arrive in its territory any movements of migrants for employment in which the migrants are subjected to conditions contravening international agreements or national legislation. All necessary measures shall be taken at the national and the international level (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and (b) against the organizers of illicit or clandestine movements of migrants for employment and against those who employ workers who have immigrated in illegal conditions. One of the purposes of such measures shall be that traffickers in human resources can be prosecuted whatever the country from which they exercise their activities. Systematic contact and exchange of information on the subject shall be established with other States, and provision shall be made for the definition and application of administrative, civil and penal sanctions. Certain protective measures are provided for in respect of migrant workers having lost their employment or in respect of those who are in an irregular situation.

Part II of the Convention, which is inspired by the provisions of the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111), requires that States for which the Convention is in force shall declare and pursue a policy designed to promote and to guarantee equality of treatment in respect of

employment and occupation, social security, trade union and cultural rights, and individual and collective freedoms. While reserving for the States concerned the latitude to employ methods appropriate to national conditions and practice, the Convention defines a series of measures to be taken to this effect. It does, however, authorize certain limitations regarding equality of access to employment (free choice of employment only after a period of lawful residence not exceeding two years, recognition of certificates and diplomas, restricted access to employment or functions where this is necessary in the interests of the State).

See **Discrimination (employment and occupation); Equal treatment; Migration for employment.**

Migration for employment

ILO Convention No. 97 (1949) (revised) concerns assistance, information, protection and equality of treatment for migrant workers. The Convention applies to migrants for employment. It has various provisions aimed at regulating the conditions under which the migration of persons for employment shall take place and ensuring equality of treatment for migrant workers in certain respects. First, the Convention contains a series of provisions concerning migration for employment, notably on the information that ILO Member States shall make available to one another and on the establishment of free services to assist and inform migrants for employment. As far as possible, States shall take steps against misleading propaganda relating to emigration and immigration, and cooperate to this end with other countries concerned. Appropriate measures shall be taken to facilitate the departure, journey and reception of migrants for employment. The Convention also provides for the establishment of medical services for migrants for employment and the members of their families.

A second series of provisions deals with equality of treatment. These comprise, for Member States ratifying the Convention, the obligation to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within their territory, treatment no less favourable than that which they apply to their own nationals in respect of certain matters. The Convention also has provisions regarding cooperation between employment services and other services connected with migration, and the free rendering of public employment services to migrants. It prohibits that a migrant for employment who has been admitted on a permanent basis, and the members of his/her family who have been authorized to accompany or join the migrant, be returned to their territory of origin because the migrant is unable to follow his/her occupation by reason of illness contracted or injury sustained subsequent to entry. States bound by the Convention undertake to permit, taking into account the limits allowed by national laws and regulations concerning the export and import of currency, the transfer of such part of the earnings and savings of the migrant as the migrant may desire.

See **Migrant workers (supplementary provisions).**

Minimum age

ILO Convention No. 138 (1973) concerns the abolition of child labour. The minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling (normally not less than 15 years). The ratifying ILO Member State undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The minimum age to be specified in conformity with the Convention shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Developing countries may initially specify a minimum age of 14 years. The minimum age shall not be less than 18 years – or 16 years under certain conditions – for any type of employment or work that is likely to jeopardize the health, safety or morals of young persons.

The Convention provides that limited categories of employment or work may be excluded from its application where special and substantial problems of application arise. The Convention does not apply to work done in schools for general, vocational or technical education or in other training institutions. Young persons of 13 to 15 years of age – or at least 15 years of age who have not yet finished their compulsory schooling – may be permitted to carry out light work of certain types and under certain conditions to be determined. Exceptions may be authorized in individual cases for such purposes as participation in artistic performances. Organizations of employers and workers, where such exist, shall be consulted regarding the above-mentioned measures. The Convention revises ten earlier Conventions in the same field.

See **Child; Child labour; Worst forms of child labour.**

Minimum wage

A wage level defined in law or agreement that is the lowest possible rate which an employer is permitted to pay.

Minimum wage fixing

ILO Convention No. 131 (1970) concerns protection against excessively low wages. The ratifying State undertakes to establish a system of minimum wages covering all groups of wage earners whose terms of employment are such that coverage would be appropriate; these groups shall be determined either in agreement or after consultation with the representative organizations of employers and workers concerned, where these exist.

The elements to be taken into consideration in determining the level of minimum wages shall, as far as possible and where appropriate, include the needs of workers and their families, and economic factors including the requirements of economic development and a high level of employment. Machinery adapted to

national conditions and requirements shall be created and/or maintained, whereby minimum wages can be fixed and adjusted. The representative organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned shall be consulted in connection with the establishment and operation of such machinery. Wherever appropriate, provision shall be made for their direct participation, on a basis of equality, in its operation. Under certain circumstances, persons having recognized competence may participate. Minimum wages shall have the force of law and failure to apply them shall incur appropriate penal or other sanctions. Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

See **Equitable wages; Wages policy.**

Minor

A person below the age of legal majority. Since the treatment of minors in the criminal law varies significantly throughout the European Union (EU), this area may be excluded from the scope of EU efforts to develop mutual recognition of decisions in criminal cases. Minors under 21 have the right to reside with their family member who is a EU citizen in any EU Member State, irrespective of which country the child is from. The EU takes measures to protect children from exploitation and violence through programmes like Daphne and STOP.

See **Child labour; Worst forms of child labour.**

Mobility

For several years, mobility has played a crucial role in the strategy of cooperation at European level. The Commission first published a Green Paper on the obstacles to mobility in 1996. Now, the indications are that the achievements of the European Union (EU) programmes have prompted a general determination to open up international mobility. For example, in Spring 2000 education ministers from the G8 countries (Canada, France, Germany, Italy, Japan, Russian Federation, United Kingdom and United States), referring to the success of the Erasmus programme, made a commitment to doubling the mobility of students, teachers, researchers and administrative staff in the education sector by 2010. This general wish to give free rein to international mobility was reflected in a recommendation of the European Parliament and the Council, adopted in July 2001, and in an action plan on skills and mobility in February 2002 with a view to opening the European Job Mobility portal, making European labour markets accessible to all by 2005. This action plan called on the EU Member States, businesses and workers themselves to make a greater effort to meet the new requirements of the labour market and also set the European governments the short-term objective of introducing a European health insurance card.

Glossary of labour law and industrial relations

Despite the surprising results achieved (more than one million students have now taken part in the Erasmus programme), one of the major obstacles for people wanting to work or learn in another EU country, or indeed to move between different parts of the labour market, is that their qualifications and competences may not be accepted. This is further complicated by the proliferation of qualifications worldwide, the diversity of national qualification systems and education and training structures, and constant changes in these systems. To tackle these obstacles, the EU has introduced several instruments, aiming at facilitating the transfer of qualifications and competences for academic or professional purposes, as reflected in the Education and Training Programme 2010.

See **Education; Professional training; Vocational training.**

Monitoring the application of Community law

The task of monitoring the application of Community law falls to the European Commission, as the guardian of the Treaties. It is an expression of the fact that the European Union is based on the rule of law and its purpose is to make sure that the law is observed and actually applied in and by the Member States. In exercising its monitoring function, the Commission takes care to safeguard the role also assigned to national authorities, particularly the courts, in this area. Monitoring the application of the law may take the following forms:

- instituting infringement proceedings following complaints or where cases are discovered in the ordinary course of events;
- taking court action against the other institutions;
- checking whether aid given by the Member States is lawful;
- checking that principles prohibiting certain types of agreements, decisions and concerted practices and the abuse of a dominant position are observed.

The Commission's annual reports on the application of Community law are an expression of the desire for transparency in dealings not only with complainants, but also with citizens and members of Parliament.

See **European Commission.**

Multinational enterprises and social policy *see* **OECD Guidelines for Multinational Enterprises; Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.**

N

New opportunities for women (NOW)

This was a 1990 European initiative with the objective of providing support for actions and programmes which would have a significant and beneficial effect on the provision of employment and training opportunities for women. It ran until 1999 under the EMPLOYMENT umbrella programme and was replaced by the EQUAL initiative.

See **EQUAL; Equal opportunities; Equal pay; Equal treatment; Equal treatment of men and women; other entries under “Equality”.**

Nice Treaty *see* **Treaties.**

Night time

Any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a.m.

Night work

According to ILO Convention No. 171 (1990), the term “night work” means all work performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m., to be determined by the competent authority after consulting the most representative organizations of employers and workers or by collective agreements. The term “night worker” means an employed person whose work requires performance of a substantial number of hours of night work that exceeds a specified limit. This limit shall be fixed by the competent authority after consulting the most representative organizations of employers and workers or by collective agreements. Convention No. 171 applies to all employed persons except those in agriculture, stock raising, fishing, maritime transport and inland navigation. An ILO member State that ratifies this Convention may exclude, wholly or partly from its scope, limited categories of workers when the application of the Convention to them would raise special problems of a substantial nature.

Specific measures required by the nature of night work shall be taken for night workers in order to protect their health, assist them in meeting their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately. Such measures shall also be

Glossary of labour law and industrial relations

taken in the fields of safety and maternity protection for all workers performing night work.

At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

- before taking up an assignment as a night worker;
- at regular intervals during such an assignment;
- if they experience health problems during such an assignment that are not caused by factors other than the performance of night work.

With the exception of a finding of unfitness for night work, the findings of such assessments shall not be transmitted to others without the workers' consent and shall not be used to their detriment. Suitable first-aid facilities shall be made available for workers performing night work, including arrangements whereby such workers, where necessary, can be taken quickly to a place where appropriate treatment can be provided.

Night workers certified, for reasons of health, as unfit for night work shall be transferred, whenever practicable, to a similar job for which they are fit. If transfer to such a job is not practicable, these workers shall be granted the same benefits as other workers who are unable to work or to secure employment. A night worker certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

- (a) before and after childbirth, for a period of at least 16 weeks of which at least eight weeks shall be before the expected date of childbirth;
- (b) for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:
 - (i) during pregnancy;
 - (ii) during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a) above, the length of which shall be determined by the competent authority after consulting the most representative organizations of employers and workers.

The measures may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave.

Compensation for night workers in the form of working time, pay or similar benefits shall recognize the nature of night work. Appropriate social services

shall be provided for night workers and, where necessary, for workers performing night work.

Before introducing work schedules requiring the services of night workers, the employer shall consult the workers' representatives concerned on the details of such schedules and the forms of organization of night work that are best adapted to the establishment and its personnel, as well as on the occupational health measures and social services that are required. In establishments employing night workers this consultation shall take place regularly.

See **Night work (women); Night worker.**

Night work (women)

ILO Convention No. 89 (1948) (revised) concerns the prohibition of night work for women in industry. Women without distinction of age shall not be employed during the night in any public or private industrial undertaking. Certain exemptions, suspensions and reductions of the norm are authorized by the Convention in clearly defined cases. The Convention does not apply to women holding responsible positions of a managerial or technical character or to women employed in health and welfare services who are not ordinarily engaged in manual work.

Night worker

This refers to, on the one hand, any worker who works at least three hours of his/her daily working time during night time as a normal course and, on the other hand, any worker who is likely during night time to work a certain proportion of his or her annual working time, as defined at the choice of the European Union Member State concerned – either by national legislation, following consultation with the two sides of industry, or by collective agreements or agreements concluded between the two sides of industry at the national or regional level.

See **Night work; Night work (women).**

Non-discrimination principle

The aim of this European Union principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 12, TEC (new Article III-7), outlaws any discrimination on the grounds of nationality. Article 13, TEC, (new Article III-8), reinforces the guarantee of non-discrimination laid down in the Treaties and extends it to the other cases cited above.

See **Discrimination; Discrimination (employment and occupation); EQUAL; Equal opportunities; Equal treatment; other entries under “Equal” and “Equality”.**

Non-governmental organizations (NGOs)

A category of national or international organizations that are independent of governments. NGOs have a specific mandate (e.g. promotion of human rights,

Glossary of labour law and industrial relations

protection of the environment, advancement of women, the professional development of members, etc.) These are sometimes called “advocacy” NGOs because they seek to influence the behaviour of governments and inter-governmental organizations. Others deliver services. These are classified as “operational” NGOs. Most NGOs do not seek to make a profit, but they usually charge a membership fee. Sometimes they ask for, and receive, business or government funding. In many cases, NGO membership is available to anyone who agrees to support its aims.

North American Agreement on Labor Cooperation (NAALC)

An agreement containing binding obligations signed by Canada, Mexico and the United States in September 1993 as part of their obligations under The North American Free Trade Agreement (NAFTA), with the main objective of improving working conditions and living standards in the territory of each party. The parties to the Agreement undertake to promote 11 labour principles that include, in addition to the core labour standards, the right to strike, minimum employment standards, equal pay for women and men, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and protection of migrant workers. The Agreement permits trade measures to enforce the observance of standards relating to occupational safety and health, child labour or minimum wage technical standards, but not the core labour standards such as freedom of association or the right to bargain collectively. The administration of the Agreement is supervised by a Commission for Labor Cooperation consisting of a ministerial council and a secretariat.

See **Core labour standards; North American Free Trade Agreement.**

North American Free Trade Agreement (NAFTA)

This entered into force on 1 January 1994. Its members are Canada, Mexico and the United States. NAFTA’s objectives are to eliminate barriers to trade in goods and services, to promote fair competition, adequate and effective protection of intellectual property rights, and effective procedures for settlement of disputes, and to provide a framework for further trilateral regional and multilateral cooperation. It provides for national treatment of goods and sets out the rules of origin. These are, as in other free-trade arrangements, fairly complex. Common customs procedures are listed, and energy and trade in basic petrochemicals are to be liberalized. NAFTA also contains rules for agriculture and sanitary and phytosanitary measures, as well as provisions on the safeguards and technical barriers to trade and government procurement.

National treatment and most-favoured-nation treatment apply to investment. This chapter also outlines the concept of a minimum standard of treatment. Other chapters concern cross-border trade in services. All modes of services delivery are covered. This is followed by more specific rules for telecommunications and

financial services, covering competition policy, monopolies and state enterprises, the temporary entry of business people, intellectual property provisions, the publication, notification and administration of laws (i.e. transparency), review and dispute settlement in anti-dumping, and countervailing duty matters and institutional arrangements and dispute settlement procedures, including exceptions, national security taxation, balance of payments, disclosure of information and cultural industries. Side agreements have been concluded in the form of the North American Agreement on Labor Cooperation and the North American Agreement on Environmental Cooperation. Some agricultural matters have also been dealt with in separate agreements.

A Cabinet-level Free Trade Commission supervises the implementation and operation of NAFTA. The secretariat is responsible, among other things, for administering panels and committees established for the settlement of disputes.

See North American Agreement on Labor Cooperation (NAALC).

North-South dialogue

A process of discussions and negotiations between the developed or industrialized countries (the North) and the developing countries (the South). Some see it as having begun in the early 1960s with, for example, the Alliance for Progress and the moves leading to the establishment of UNCTAD (United Nations Conference on Trade and Development) in 1964 and the concurrent formation of the Group of 77. The more or less formal end of the dialogue came with the 1980 Special Session of the United Nations General Assembly, followed the arrival in the United Nations and its specialized agencies of a large number of newly independent developing countries whose numbers allowed them increasingly to define or influence the work programme of these bodies. This, coupled with the view advocated strongly by many developing countries that their legitimate concerns about development, economic growth and participation in the global trading system were not being taken seriously by the developed countries, led by the early 1970s to a realization by the North that something had to be done.

In 1974, the United Nations General Assembly passed a resolution on the New International Economic Order, in effect a vast claim for the transfer of resources from the North to the South. The adoption of the Charter of Economic Rights and Duties of States, an attempt to redefine aspects of international law, occurred in the same year. Early in 1975 followed the first Lomé Convention which, though producing advantages for developing countries, also showed that probably they did not have the power to force a rapid change.

See Charter of Economic Rights and Duties of States.

O

Occupational cancer

ILO Convention No. 139 (1974) concerns the prevention of occupational cancer. The Convention entails the obligation for the ratifying State to determine periodically the carcinogenic substances and agents to which occupational exposure shall be prohibited or regulated, and to make every effort to have carcinogenic substances and agents replaced by non-carcinogenic ones, to prescribe protective measures, supervisory measures, information requirements and the necessary medical examinations, tests or investigations.

Occupational health services

ILO Convention No. 161 (1985) concerns the maintenance, by means of a preventive service, of a safe, healthy and well-adapted working environment to promote the physical and mental health of all workers. Occupational health services with essentially preventive and advisory functions shall be developed progressively for all workers, within the framework of a coherent national policy. To this end, the most representative organizations of employers and workers shall be consulted. Occupational health services may be organized as a service for a single undertaking or common to a number of undertakings. They may be organized by the undertakings or groups of undertakings, by public authorities or social security institutions, or by any other competent body. Employers, workers and their representatives cooperate and participate in their implementation.

The task of the services shall be to identify and assess risks from health hazards in the workplace by surveillance of the working environment and working practices, as well as workers' health in relation to work. They give advice on the subject and promote the adaptation of work to the worker, as well as on information, training and education in this field; organize first aid, participate in the analysis of occupational accidents and occupational diseases, and contribute to measures of vocational rehabilitation; and carry out their functions in cooperation with the other services in the undertaking and with other bodies concerned with the provision of health services. Their personnel shall enjoy full professional independence and be properly qualified.

Occupational health services shall be informed of any known factors and any suspected factors that may affect the workers' health, such as occurrences of ill

health among workers and absence from work for health reasons, but they shall not be required to verify reasons for absence. The surveillance of workers' health in relation to work shall be free of charge and shall take place as far as possible during working hours; it shall involve no loss of earnings for workers. The authority responsible for supervising and advising occupational health services shall be designated by national laws or regulations.

See **Occupational safety and health.**

Occupational safety and health

ILO Convention No. 155 (1981) concerns a coherent national policy on occupational safety, occupational health and the working environment, including communication and cooperation at all levels in this area. The Convention, which applies to all branches of economic activity and to all workers (including the public service) – but with the possibility of certain exclusions – provides that each ratifying ILO Member State shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

The Convention defines the main spheres of action of such a policy. It lays down a series of quite detailed provisions concerning action at the national level, and at the level of the undertaking. In this context, it provides in particular for the adoption of laws or regulations, or any other appropriate method (including training), for the operation of a system of inspection and for measures to be taken from the design stage onwards, that is, even prior to the introduction into occupational use of machinery, substances, and so on. It provides, among other things, that employers shall be required to supply protective clothing and protective equipment and to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment, processes, substances, and so on, under their control, are safe and without risk to health. Furthermore, it provides that workers and their representatives in the undertaking shall cooperate in the fulfilment by their employer of the obligations placed upon him/her, but also that a worker who has removed himself/herself from a work situation (which he or she shall report forthwith) that he has reasonable justification to believe presents an imminent and serious danger to life or health shall be protected from undue consequences.

See **Health and safety at work; Occupational health services.**

Occupational segregation *see* **Job segregation/employment segregation.**

OECD Guidelines for Multinational Enterprises

A set of voluntary guidelines in the form of recommendations for the behaviour of multinational enterprises (MNEs), first adopted by the Member States of the Organisation for Economic Co-operation and Development (OECD) in 1976 and last revised in 2000. The guidelines are not intended to distinguish between MNEs and domestic enterprises. Rather, they are meant to reflect good practice for all. Provisions include:

- a range of general policies (contribute to economic, social and environmental progress in host countries, respect human rights, encourage local capacity building and human capital formation, support and uphold good corporate principles, etc.);
- disclosure of timely, regular, reliable and relevant information regarding enterprises' activities, structure, financial situation and performance;
- employment and industrial relations (enterprises should respect the right of employees to be represented by trade unions, contribute to the effective abolition of child labour and the elimination of all forms of forced or compulsory labour, not discriminate among employees on grounds of race, colour, sex, religion, etc., and provide employee representatives with assistance in developing effective collective agreements);
- the need to protect the environment, public health and safety, and to contribute to the wider goal of sustainable development;
- neither the offering nor accepting of bribes by enterprises;
- regarding consumer interests, taking all reasonable steps to ensure the safety and quality of goods and services;
- the promotion of the transfer and rapid diffusion of technologies and know-how, and the performing of science and technology development work in host countries;
- conducting enterprise activities in a competitive manner;
- the importance of contributions of enterprises to public finances of host countries by paying their taxes on time.

See **Organisation for Economic Co-operation and Development (OECD); Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.**

Ombudsperson

The position of European Ombudsperson was created by the Treaty on European Union (Maastricht Treaty), which came into force in 1993. The Ombudsperson is authorized to receive complaints from European Union (EU) citizens or

natural or legal persons residing or having their legal domicile in a Member State. He/she helps to uncover misadministration in the Community institutions and bodies. Only the Court of Justice and the Court of First Instance – acting in their judicial role – fall outside his/her jurisdiction. The Ombudsperson therefore acts as an intermediary between the citizen and the Community authorities. He/she is entitled to make recommendation to the Community institutions and to refer a matter to the European Parliament, so that the latter can, if necessary, apply the political consequences of a case of misadministration.

A complaint to the European Ombudsperson must be submitted within two years of the date on which the underlying facts were brought to the attention of the complainant. Moreover, any appropriate administrative steps with regard to the institutions or bodies concerned must already have been taken. A complaint is not eligible if the alleged facts are or have been the subject of legal proceedings. Any complaint to the Ombudsperson must clearly state the subject of the complaint and the identity of the complainant, who may, however, ask for the complaint to remain confidential. If necessary, the Ombudsperson can advise the complainant to approach another authority. The Ombudsperson, on his/her own initiative or following a complaint, conducts all the inquiries he/she considers justified to clarify any suspected misadministration. The Ombudsperson then informs the institution or body concerned, which can respond with its own comments. The Community institutions and bodies are obliged to provide the Ombudsperson with any information he/she requests and to allow access to the relevant files. They can refuse to do so only on justified grounds of confidentiality.

If the Ombudsperson discovers a case of misadministration, he/she informs the institution concerned and makes draft recommendations. The institution concerned has three months to submit a detailed opinion. The Ombudsperson then submits a report to the European Parliament and the institution concerned. The complainant is also informed of the outcome of the investigations. Every year, the Ombudsperson presents a report to the European Parliament on the results of his/her investigations.

Open Method of Coordination

Following the introduction under Article 136 and 137, TEC (new Articles III-103 to 104), of the fight against social exclusion among the social policy provisions, the Lisbon European Council in March 2000 recognized that the extent of poverty and social exclusion was unacceptable. Building a more inclusive European Union (EU) was thus considered as an essential element in achieving the EU's ten-year strategic goal of sustained economic growth, more and better jobs and greater social cohesion. The Lisbon Council agreed to adopt an Open Method of Coordination in order to make a decisive impact on the eradication of poverty and social exclusion by 2010.

Glossary of labour law and industrial relations

The key elements in the Open Method of Coordination are:

- a Social Protection Committee, established in 2000 to serve as a vehicle for cooperation exchange between the Commission and the EU Member States on modernizing and improving social protection systems;
- common objectives on poverty and social exclusion that were agreed at the Nice Summit in December 2000 and revised at the Employment, Social Policy, Health and Consumer Affairs Council in December 2002;
- National Action Plans against poverty and social exclusion by all EU Member States (the ten new members have presented their plans for 2004-06);
- joint reports on social inclusion and regular monitoring, evaluation and peer review;
- common indicators to provide a means of monitoring progress and comparing best practice;
- a Community Action Programme to encourage cooperation between Member States to combat social exclusion.

See **Poverty**.

Organisation for Economic Co-operation and Development (OECD)

Established in 1961 as the successor to the Organisation for European Economic Cooperation (OEEC), the OECD is sometimes called a “rich-country club” because its members account for more than 70 per cent of global output. Its objectives are: (a) to achieve the highest sustainable economic growth and employment, and a rising standard of living in member countries, while maintaining financial stability, and thus to contribute to the development of the world economy; (b) to contribute to sound economic expansion in member as well as in non-member countries in the process of economic development; and (c) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The OECD can point to considerable achievements in the trade and economic fields, assisted to some extent by the homogeneous nature of its membership, over the last 30 years. Membership consists of Australia, Austria, Belgium, Canada, Czech Republic, Denmark, European Communities, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States. The highest OECD body is the annual Ministerial Council Meeting, usually held in May or June. The OECD secretariat is located in Paris.

See **OECD Guidelines for Multinational Enterprises**.

Overtime

The working hours of a worker in excess of the standard established by law, a collective bargaining agreement, an individual employment contract or company policy. Such hours are generally paid for at “penalty” or overtime rates.

P

Paid educational leave

ILO Convention No. 140 (1974) aims to promote education and training during working hours, with financial entitlements. The Convention provides that the ratifying State shall formulate and apply a policy designed to promote the granting of paid educational leave. Its implementation may be by means of national laws and regulations, collective agreements, arbitration awards, and so on. The aims to be pursued (if need be by stages) are: training at any level; general, social and civic education; and trade union education.

The Convention specifies the following main objectives of this policy:

- the acquisition, improvement and adaptation of occupational and functional skills;
- the promotion of employment and job security in conditions of scientific and technological development, for example;
- the competent and active participation of workers and their representatives in the life of the undertaking and of the community;
- the human, social and cultural advancement of the workers; and
- continuing education and training.

This policy shall take account of the stage of development and the particular needs of the country, and shall be coordinated with general policies concerning employment, education and training, and hours of work. The public authorities, employers' and workers' organizations and the institutions concerned shall be associated with the formulation and application of the policy. Financing shall be on a regular and adequate basis.

Paid educational leave shall not be denied to workers on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. The period of paid educational leave shall be assimilated to a period of effective service for the purpose of establishing claims to social benefits and other rights deriving from the employment relation.

See **Education**.

Paid work

Work that is remunerated in cash or in kind.

Parental leave

The individual right to leave, in principle on a non-transferable basis, for all male and female workers following the birth or adoption of a child, to enable them to take care of that child. There is usually a fixed amount of leave, or fixed amounts of time in any year or period of years that may be taken for reasons concerning care responsibilities.

See **Parental leave and leave for family reasons.**

Parental leave and leave for family reasons

Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded between the general cross-industry organizations – European Trade Union Confederation (ETUC), European Centre of Enterprises with Public Participation (CEEP) and the Union of Industrial and Employers' Confederations of Europe (UNICE) – on 14 December 1995 established minimum requirements in respect of parental leave and unforeseeable absence from work, as an important means of reconciling professional and family responsibilities, and promoting equal opportunities and treatment for women and men.

The framework Agreement annexed to the Directive is made obligatory. The Agreement provides for:

- male and female workers to have individual entitlement to parental leave on the grounds of the birth or adoption of a child, enabling them to take care of the child for at least three months;
- the conditions of access to, and procedures for, applying parental leave to be defined by law and/or collective agreement in the European Union (EU) Member States, subject to compliance with the minimum requirements of the agreement;
- the Member States and/or social partners to take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave;
- workers to have the right to return to the same job at the end of parental leave or, if that is not possible, to an equivalent or similar job consistent with their employment contract or relationship;
- the maintenance of rights acquired or in the process of being acquired by the worker on the date on which parental leave starts; at the end of the period of leave, those rights will apply;
- the Member States and/or the social partners to take the necessary measures to allow workers to take time off from work, in accordance with national legislation, collective agreements and/or practice, for unforeseeable reasons arising from a family emergency in the event of sickness or accident making the immediate presence of the worker indispensable.

Glossary of labour law and industrial relations

The EU Member States may introduce more favourable provisions than those laid down in the Directive. Implementation of the provisions of the Directive will not in any way constitute sufficient grounds to justify a reduction in the general level of protection afforded to workers in the field covered. The Member States are to determine the range of penalties applicable for infringements of national provisions pursuant to the Directive, and are to take all the necessary steps to ensure their implementation. The penalties applied must be effective and commensurate with the infringement, and must constitute a sufficient deterrent.

See Parental leave.

Participation in profits and enterprise results

Participation by employed persons in profits and enterprise results (including equity participation) is strongly encouraged at European Community level. Council Recommendation 92/443/EEC of 27 July 1992 calls on the European Union Member States to “acknowledge the potential benefits of a wider use [...] of a broad variety of schemes to increase the participation of employed persons in profits and enterprise results by means of profit-sharing, employee share-ownership or a combination of both; to take account of the role and responsibility of management and labour in this context, in accordance with national law and/or practice”. This Recommendation is largely based on the PEPPER (Promotion of Employee Participation in Profits and Enterprise Results) Report, drafted by the European Commission on the basis of the replies received from Member States. In its conclusions, the report asserts that, in all cases, profit-sharing is associated with higher productivity levels.

Participation of employees in a European Company

The influence of the body representative of the employees and/or the employees’ representatives in the affairs of a company by way of: (a) the right to elect or appoint some of the members of the company’s supervisory or administrative organ; or, (b) the right to recommend and/or oppose the appointment of some or all of the members of the company’s supervisory or administrative organ (See Article 2, Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employers).

See Statute for a European company.

Participation rates

The rate of participation by a defined group – for example women, men, parents, etc. – as a percentage of overall participation, usually in employment.

Part-time employment

Employment implying working hours that are shorter than normal or standard full-time hours.

Part-time work (EU)

The EU Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time working concluded by the general cross-industry organizations – European Trade Union Confederation (ETUC), European Centre of Enterprises with Public Participation (CEEP) and Union of Industrial and Employers' Confederations of Europe (UNICE) – is intended to ensure that workers concerned by the new forms of flexible working receive comparable treatment to full-time staff on open-ended contracts. The purpose of the agreement is to eliminate discrimination against part-time workers and to improve the quality of part-time work. The agreement also aims to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner that takes into account the needs of employers and workers. The agreement applies to part-time workers who have an employment contract or employment relationship as defined by the laws, collective agreements or practices in force in each European Union (EU) Member State.

A part-time worker is defined as an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker. A comparable full-time worker is defined as a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time, unless different treatment is justified on objective grounds. EU Member States after consulting the social partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualifications. After consulting the social partners, they should identify and review obstacles that may limit the opportunities for part-time work and, where appropriate, eliminate them.

A worker's refusal to transfer from full-time to part-time work or vice versa should not in itself constitute a valid reason for dismissal. Wherever possible, employers should give consideration to:

- requests by workers to transfer from full-time to part-time work that becomes available in the establishment;
- requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;
- the provision of timely information on the availability of part-time and full-time jobs in the establishment;
- measures to facilitate access to part-time work at all levels of the enterprise;
- the provision of appropriate information to workers' representatives about part-time working in the enterprise.

Glossary of labour law and industrial relations

EU Member States and/or social partners can maintain or introduce more favourable provisions than set out in the agreement. Implementation of the provisions of the agreement does not constitute valid grounds for reducing the general level of protection afforded to workers in the field of the agreement. Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its entry into force, or ensure that the social partners have, by that date, introduced the necessary measures by agreement. The Member States may have a maximum of one more year, if this is necessary to take account of special difficulties or implementation by a collective agreement. They must inform the Commission forthwith in such circumstances.

See Part-time work (ILO).

Part-time work (ILO)

According to ILO Convention No. 175 (1994):

- (a) the term “part-time worker” means an employed person whose normal hours of work are less than those of comparable full-time workers;
- (b) the normal hours of work referred to in subparagraph (a) may be calculated weekly or on average over a given period of employment;
- (c) the term “comparable full-time worker” refers to a full-time worker who:
 - (i) has the same type of employment relationship;
 - (ii) is engaged in the same or a similar type of work or occupation; and
 - (iii) is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity as the part-time worker concerned;
- (d) full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

This Convention applies to all part-time workers, it being understood that an ILO Member State may exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature.

Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of:

- (a) the right to organize, the right to bargain collectively and the right to act as workers’ representatives;

- (b) occupational safety and health;
- (c) discrimination in employment and occupation.

Statutory social security schemes based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice. Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of:

- (a) maternity protection;
- (b) termination of employment;
- (c) paid annual leave and paid public holidays; and
- (d) sick leave, it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.

Part-time workers whose hours of work or earnings are below specified thresholds may be excluded by a Member State:

- (a) from the scope of any of the statutory social security schemes, except in regard to employment injury benefits;
- (b) from the scope of any of the measures taken in specific fields, except in regard to maternity protection measures other than those provided under statutory social security schemes.

The thresholds referred to above shall be sufficiently low as not to exclude an unduly large percentage of part-time workers.

See **Part-time work (EU); Working time (organization of)**.

Pattern bargaining

A collective bargaining procedure whereby a trade union seeks to obtain equal or identical terms from a group of employers in a particular enterprise or industry, based on an agreement already obtained in other enterprises, industries or sectors. The first agreement thus serves as a model for imitation by other employers or unions.

See **Collective bargaining**.

Pay

Net take-home earnings received for a period of employment. It reflects gross earnings minus lawful deductions, such as taxes, trade union dues and social security contributions.

PEPPER schemes *see* **Shareholding and financial participation of employees.**

Performance-related pay

A pay system often negotiated between an employer and a trade union that provides for increases in wages or salaries of an individual or group based on the achievement of some predetermined performance criteria.

See **Pay.**

Permanent worker

A worker with an employment contract or relationship of an indefinite duration.

Philadelphia, Declaration of *see* **Declaration of Philadelphia.**

Picketing

A form of industrial action where workers on strike stand or walk in the surroundings of the workplace in order to persuade other workers not to enter the plant, as well as to prevent the employer from hiring new workers, to publicize the grievances of strikers or to gain the support of suppliers' workers and prevent them from continuing to make supplies to the employer. Picketing is common where an employer continues production during a strike by using management or "scab" labour.

See **Strike.**

Plantations

ILO Convention No. 110 (and Protocol, 1982) aims to expedite the application of certain provisions of existing Conventions to plantations. Convention No. 110 regulates the employment of plantation workers on plantations situated in the tropical or subtropical regions where certain specified crops are cultivated or produced for commercial purposes. The Convention comprises 14 parts that deal with the following subjects:

- I. General provisions (scope of the Convention).
- II. Engagement and recruitment of migrant workers (granting of licences to recruiters, supervision of recruitment by a public officer, medical examination, transport and welfare of the recruited workers).
- III. Contracts of employment (maximum duration of contract one to three years according to circumstances) and abolition of penal sanctions in case of breach of contract by a worker.
- IV. Wages (methods of fixing minimum wages, regular payment of wages, protection of wages, information for workers, implementation and records).

- V. Annual holidays with pay (determination of the minimum period of continuous service providing entitlement to holidays and their duration, proportionate holiday in the case of a shorter period of service, amount of remuneration due).
- VI. Weekly rest (normally at least 24 consecutive hours in every period of seven days).
- VII. Maternity protection (maternity leave of at least 12 weeks, six of which after confinement, a qualifying period of not more than 150 days of employment, medical and cash benefits, insurance contributions, nursing during working hours, protection against dismissal).
- VIII. Workers' compensation (equality of treatment for foreign workers and national workers).
- IX. Right to organize and collective bargaining (right to organize, conciliation machinery and procedures, protection against acts of anti-union discrimination, adequate protection for employers' and workers' organizations against acts of interference by each other or each other's agents).
- X. Freedom of association (the right of workers and employers to establish organizations, federations or confederations of their own choosing, and to affiliate to them and to international organizations).
- XI. Labour inspection (functions of the inspection system, status of inspectors, facilities for the service, powers and obligations of the inspectors, submission of periodical inspection reports and enforcement measures).
- XII. Housing (minimum standards, application).
- XIII. Medical care (determination of the standards applicable to medical services and measures for the eradication or control of prevalent endemic diseases).
- XIV. Final provisions.

To ratify the Convention, a Member State shall comply with, in addition to the general provisions (Part I) and the final provisions (Part XIV), Part IV (Wages), Part IX (Right to organize and collective bargaining) and Part XI (Labour inspection), and at least two of the nine remaining parts.

Political, economic and social rights

These rights are enshrined in the European Union (EU) Charter of Fundamental Rights, proclaimed by EU leaders in Nice in December 2000.

See Charter of Fundamental Rights of the European Union.

Positive action

Measures targeted at a particular group, and intended to eliminate and prevent discrimination or to offset disadvantages arising from existing attitudes, behaviours and structures. Sometimes referred to as positive discrimination.

Positive discrimination *see* **Positive action.**

Posted worker

The term refers to a worker who, for a limited period, carries out his/her work in the territory of a European Union Member State other than the State in which he/she normally works. (See EU Directive No. 96/71/EC of 16 December 1996.)

See **Posting of workers.**

Posting of workers

EU Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services is intended to remove uncertainties and obstacles that may impede the freedom to provide services, by increasing legal certainty and allowing identification of the terms and conditions of employment applicable to workers who carry out temporary work in a European Union (EU) Member State other than that whose law governs their employment relationship and to avoid the risks of abuse and exploitation of posted workers. The Directive applies to undertakings that, in the framework of the transnational provision of services, post workers to the territory of a Member State:

- on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended;
- to an establishment or to an undertaking owned by the group;
- as a temporary employment undertaking, to a user undertaking.

For the purposes of the Directive, “posted worker” means a worker who, for a limited period, carries out his or her work in the territory of a EU Member State other than the State in which he or she normally works. The definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted. Member States must ensure that undertakings guarantee posted workers a central core of mandatory protective legislation laid down in the Member State in which the work is carried out:

- by law, regulation or administrative provision; and/or
- by collective agreements or arbitration awards that have been declared universally applicable, in so far as they concern the activities set out in the Directive’s annex.

Conditions of work and employment to be covered are:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates;
- conditions of hiring-out of workers, in particular by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- equality of treatment between men and women and other provisions of non-discrimination.

The principle of immediate application of the rules is subject to a certain degree of flexibility with regard to minimum rates of pay and/or paid annual holidays in the case of postings other than by temporary employment undertakings. Member States may apply a period of grace of no more than one month for application of minimum rates of pay, after consulting employers and labour. They may provide for agreement-based exemptions from this period of grace or from immediate application of minimum rates of pay, again subject to a limit of one month. They may also provide for exemptions to be granted in respect of application of minimum rates of pay and paid holidays, where the amount of work to be done is not significant. Under certain conditions, the provisions concerning minimum wage and paid holidays are not applicable in the case of initial assembly and/or first installation of goods. The period of posting must not exceed eight days. This provision does not apply to building and civil engineering.

In calculating the period of posting (on the basis of a reference period of one year from the beginning of the posting), any periods during which the post has previously been filled by another posted worker are taken into account. The above provisions do not prevent application of terms and conditions of employment that are more favourable to workers. Allowances specific to the posting are considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting. “Collective agreements or arbitration awards which have been declared universally applicable” means collective agreements or arbitration awards that must be observed by all undertakings in the geographical area, and in the profession or industry concerned.

Glossary of labour law and industrial relations

Equality of treatment is where national undertakings in a similar position are subject, in the place in question or in the sector concerned, to the same obligations as posting undertakings and are required to fulfil such obligations with the same effects. EU Member States may provide that undertakings must guarantee temporarily posted workers the terms and conditions that apply to temporary workers in the Member States where the work is carried out. Member States must designate one or more liaison offices or one or more competent national bodies, and notify the other Member States and the Commission accordingly. Member States must make provision for cooperation between the public authorities that, in accordance with national legislation, are responsible for monitoring terms and conditions of employment. Mutual administrative assistance is provided free of charge. Member States must take the appropriate measures to make the information on terms and conditions of employment generally available. They must ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under the Directive. In order to enforce the right to the terms and conditions of employment guaranteed by the Directive, judicial proceedings may be instituted in the Member State in whose territory the worker is or was posted.

Poverty

The Treaty of Maastricht introduced in 1993, for the first time, the fight against social exclusion among the objectives of the European Community. Article 136, TEC (new Article III-103), foresees that the Community and the European Union Member States have the objective of promoting employment, the amelioration of living and working conditions, adequate social protection, promotion of social dialogue, the development of human resources, an increasing level of employment and the fight against social exclusion. For the first time, a European Treaty is concerned with people outside the employment market, since the earlier social norms concerned only workers.

Preferential treatment

The treatment of one individual or group of individuals in a manner that is likely to lead to better benefits, access, rights, opportunities or status than those of another individual or group of individuals. It may be used positively when it implies a positive action intended to eliminate previous discriminatory practice, or negatively where it is intended to maintain differentials or advantages of one individual or group of individuals over another.

Privacy

Each citizen's right to privacy is upheld in various European Union (EU) instruments, including European Court of Justice case law and the Charter of Fundamental Rights of the European Union.

Private employment agencies

For the purpose of ILO Convention No. 181 (1997) the term “private employment agency” means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) that assigns their tasks and supervises the execution of these tasks;
- other services relating to job-seeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment. This Convention applies to all private employment agencies and to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.

One purpose of this Convention is to allow the operation of private employment agencies, as well as the protection of the workers using their services, within the framework of its provisions.

After consulting the most representative organizations of employers and workers concerned, an ILO Member State may:

- prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;
- exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.

The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers. A Member State shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice. Measures shall be taken to ensure that the workers recruited by private

Glossary of labour law and industrial relations

employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member State shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

The processing of personal data of workers by private employment agencies shall be:

- done in a manner that protects these data and ensures respect for workers' privacy in accordance with national law and practice;
- limited to matters related to the qualifications and professional experience of the workers concerned, and any other directly relevant information.

Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. In the interest of the workers concerned, the competent authority may authorize exceptions, as well as specified types of services provided by private employment agencies.

A Member State shall adopt all necessary and appropriate measures both within its jurisdiction and, where appropriate, in collaboration with other Member States, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses.

The competent authority at national level shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers' and workers' organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies. A Member State shall take the necessary measures to ensure adequate protection for the workers employed by private employment agencies in relation to: freedom of association; collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers' claims; and maternity protection and benefits, and parental protection and benefits.

A Member State shall determine and allocate the respective responsibilities of private employment agencies providing the services and of user enterprises in relation to: collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training;

protection in the field of occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers claims; and maternity protection and benefits, and parental protection and benefits.

Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

- to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
- for statistical purposes.

The competent authority shall compile and, at regular intervals, make this information publicly available.

See Employment services.

Procedure for collective redundancies

According to European Union (EU) legislation, employers have the obligation to notify the competent public authorities in writing of any projected collective redundancies. EU Member States may provide that in case of planned collective redundancies arising from the termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent authority in writing only if the latter so requests. Such a notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

Employers have the obligation to forward to the workers' representatives a copy of the various notifications. The workers' representatives may send any comments they may have to the competent public authorities. Projected collective redundancies notified to the competent public authorities shall take effect not earlier than 30 days after notification, without prejudice to any provisions governing individual rights with regard to notice of dismissal. EU Member States may grant the competent public authorities the power to reduce this period. The period shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies. Where the initial period provided is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification, where the problems raised by the projected collective redundancies are not likely to be solved within the initial period. Member States, however, need not apply the above-

Glossary of labour law and industrial relations

mentioned procedure to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision. Member States may grant the competent public authority wider powers of extension. The employer must be informed of the extension and the grounds for it before expiry of the initial period usually provided. (See EU Directive 98/59/EC of 20 July 1998.)

See **Collective redundancies; Termination of employment.**

Productivity bargaining

Negotiations between workers or their representatives and management, typically conducted at the enterprise level and concerning changes in work rules and practices aimed at increasing productivity or eliminating inefficiencies, usually in exchange for material benefits for workers. It also refers to negotiations aiming at eliminating outmoded work practices or introducing new technologies.

See **Collective bargaining.**

Professional training

The Maastricht Treaty, which came into force in 1993, dedicated Article 127, TEC (new Article III-99), to professional training, which states: "The Community shall implement a vocational training policy which shall support and supplement the action of the European Union (EU) Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training." Community action shall aim to:

- facilitate adaptation to industrial changes, in particular through vocational training and retraining;
- improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
- facilitate access to vocational training and encourage mobility of instructors and trainees, and particularly young people;
- stimulate cooperation on training between educational or training establishments and firms;
- develop exchanges of information and experience on issues common to the training systems of the Member States.

The Community and the EU Member States shall foster cooperation with third countries and competent international organizations in the sphere of vocational training.

Protection of wages

ILO Convention No. 95 (1949) concerns the full and prompt payment of wages in a manner that provides protection against abuse. Wages payable in money shall

be paid only in legal tender (payment by cheque is authorized under certain conditions). Partial payment of wages in kind (payment in high alcoholic-content liquor or noxious drugs shall not be permitted under any circumstances) may be authorized where this is customary or desirable, and is appropriate for the personal use and benefit of the worker and his/her family. The value attributed to such allowances in kind shall be fair and reasonable. Wages shall normally be paid directly to the worker concerned.

The Convention protects the worker's liberty to dispose freely of his/her wages, without any coercion to make use of works stores. Goods at these works stores shall be sold at fair and reasonable prices. The stores shall not be operated for the purpose of securing a profit but for the benefit of the workers concerned, where access to other stores and services is not possible. The Convention also provides that the extent to which deductions from wages are permitted must be regulated and limited. Wages shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his/her family. Wages shall be treated as a privileged debt in the event of the bankruptcy or judicial liquidation of an undertaking.

Other provisions of the Convention concern the regular payment of wages, the days on which and the places at which they shall be paid, the information of workers in regard to the above, the obligation to prescribe adequate penalties and remedies, and other measures to ensure the implementation of the Convention. Convention No. 95 applies to all persons to whom wages are paid or payable, but the competent authority may, after consultation with employers' and workers' organizations, exclude persons not employed in manual labour or employed in domestic service or similar work.

Protection of workers' claims (employer's insolvency)

According to ILO Convention No. 173 (1992), the term "insolvency" refers to situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of its creditors. The term may extend to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example where the amount of the employer's assets is recognized as being insufficient to justify the opening of insolvency proceedings.

The extent to which an employer's assets are subject to the proceedings of insolvency shall be determined by national laws, regulations or practice. The provisions of Convention No. 173 shall be applied by means of laws or regulations or by any other means consistent with national practice.

In the event of an employer's insolvency, workers' claims arising out of their employment shall be protected by a privilege so that they are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share. The privilege shall cover at least:

Glossary of labour law and industrial relations

- the workers' claims for wages relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
- the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year;
- the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
- severance pay due to workers upon termination of their employment.

National laws or regulations may limit the protection by privilege of workers' claims to a prescribed amount, which shall not be below a socially acceptable level. Where the privilege afforded to workers' claims is so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value. National laws shall give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system.

The workers' claims protected shall include at least:

- the workers' claims for wages relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of the employment;
- the workers' claims for holiday pay due as a result of work performed during a prescribed period, which shall not be less than six months, prior to the insolvency or prior to the termination of the employment;
- the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of employment;
- severance pay due to workers upon termination of their employment.

The payment of workers' claims against their employer arising out of their employment shall be guaranteed through a guarantee institution when payment cannot be made by the employer because of insolvency.

See **Guarantee institutions (employer's insolvency); Insolvency of the employer; Insolvency (state of).**

Protection of young people at work

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work obliges European Union (EU) Member States to adopt minimum requirements aimed in particular at improving working conditions, and

guaranteeing young workers better health and safety protection. The Directive applies to all young people under the age of 18 who have an employment contract or an employment relationship defined by the law in force in a EU Member State and/or subject to the law in force in a Member State. The Member States may stipulate that the Directive shall not be applicable to occasional work or work carried out for a limited period in domestic service in a private household, or to work in a family business that is not considered likely to harm, injure or endanger young people. The Directive provides that the Member States shall take the necessary measures to prohibit the employment of children and shall ensure that the employment of adolescents is strictly controlled and protected under the conditions provided for in the Directive.

The Directive defines categories of young people as follows:

- young people: young people under the age of 18;
- children: young people under the age of 15 or who are still in full-time compulsory education in accordance with national legislation;
- adolescents: young people between the ages of 15 and 18 who are no longer in full-time compulsory education in accordance with national legislation.

The Directive's main objective is to prohibit the employment of children. However, the Directive allows the EU Member States to stipulate, subject to certain conditions, that the ban on the employment of children is not applicable to:

- children employed for the purposes of cultural, artistic, sporting or advertising activities, subject to prior authorization by the competent authority in each specific case;
- children aged 14 years or over who work in an undertaking as part of a work/training scheme or traineeship, provided that this work is carried out in accordance with the requirements laid down by the competent authority;
- children aged 14 years or over performing light work other than that referred to in the first point above; however, children over 13 years may perform light work for a limited number of hours per week in categories of employment defined in national legislation.

The Directive includes provisions relating to:

- the employer's general obligations, such as protection of the health and safety of young people, assessment of the risks to young people associated with their work, assessment and monitoring of the health of young people, information about young people, and children's legal representatives on the possible risks to their health and safety;

Glossary of labour law and industrial relations

- types of employment that must not be carried out by young people, such as work which exceeds the mental or physical capacities of young people, or work involving harmful exposure to dangerous substances.

The Directive also contains provisions relating to working hours, night work, rest periods, annual leave and rest breaks. Each Member State is responsible for defining the necessary measures applicable in the event of infringement of the provisions of this Directive; these measures must be effective and proportionate to the offence. The Directive contains a non-regression clause concerning the level of protection for young people.

See **Child labour; Minimum age; Minor; Worst forms of child labour; Youth; Youth employment.**

Public employment services *see* **Employment services.**

Public service

According to European Union legislation, the concept of public service is a twofold one: it embraces both bodies providing services and the general-interest services they provide. Public-service obligations may be imposed by the public authorities on the body providing a service (airlines, road or rail carriers, energy producers and so on) either nationally or regionally. The concept of the public service and the concept of the public sector (including the civil service) are often, wrongly, confused; they differ in terms of function, status, ownership and “clientele”.

Public service charter

According to European Union (EU) legislation, the idea behind a public service charter is that there should be an instrument setting out the basic rights and principles governing the provision of services to users. Such principles would include: continuity of service; quality; security of supply; equal access; affordable prices; and social, cultural and environmental acceptability.

Q

Quality circle

A problem-solving technique used in the workplace initially concerned with quality control but progressively embracing other matters such as productivity and improved production methods, costs and safety. Quality circles tend to focus on the need to continuously improve that part of the production process for which members of a specific circle are responsible. Quality circles are usually established on a permanent basis and consist of managers and supervisors together with the relevant work group. Recommendations are submitted to management and circle members assist in implementing them once accepted by management.

Quota

A defined proportion or share of places, seats or resources to be filled by or allocated to a specific group, generally under certain rules or criteria, and aimed at correcting a previous imbalance, usually in decision-making positions or in access to training opportunities or jobs.

R

Race

The European Union (EU) is firmly opposed to any discrimination based on race. Article 13, TEU (new Article III-196) of the Treaty on European Union, empowers the EU to pass laws against all forms of racially based discrimination. Directive 2000/43/EC requires EU Member States to make discrimination on grounds of racial and ethnic origin unlawful in the following areas: employment; training; education; access to social security and health care; social advantages; access to goods and services, including housing. (See Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 December 2000).

See **Discrimination; Discrimination (employment and occupation).**

Race-to-the-bottom argument

This expresses the fear that the need to compete with imports from countries with low labour costs and lower labour standards will reduce wages and labour conditions in the developed countries. This argument forms part of the rationale for discussions on a social clause and trade and labour standards. A similar argument has been made in relation to environmental standards where it is thought that lower environmental requirements in some countries could give them a competitive advantage.

See **Core labour standards; Dumping; Social clause; Social dumping.**

Racism and xenophobia

These are in direct breach of fundamental European values. Since the signing of the Amsterdam Treaty in 1997, Article 13, TEC (new Article III-8), has provided a basis for combating all forms of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in the European Union (EU). It was on the basis of this Article that in June 2000 the European Council adopted an important Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. In addition to committing itself to the implementation of Article 13, the EU has pursued its efforts to integrate the fight against racism and xenophobia into all its policies: employment, the European Structural Funds, education, training and youth. Moreover, Article 29, TEU (new Article III-42), provides a legal basis for the

fight against racism and xenophobia in the fields of police and judicial cooperation in criminal matters.

The European Monitoring Centre on Racism and Xenophobia (EUMC) also plays an important role. Set up in Vienna in June 1997, its main task is to observe the scale of racism and xenophobia within the EU and developments in this area, to analyse the reasons for these phenomena and to draw up proposals for presentation to the European Community institutions and the EU Member States. The Monitoring Centre is also responsible for setting up and coordinating a European Racism and Xenophobia Information Network (RAXEN). An agreement was concluded on 21 December 1998 between the Centre and the Council of Europe in order to step up cooperation between the former and the Council of Europe's Committee on racism and intolerance.

See **Discrimination; Equal treatment on grounds of racial and ethnic origin; European Monitoring Centre on Racism and Xenophobia (EUMC); Fundamental rights.**

Radiation protection

ILO Convention No. 115 (1960) concerns the protection of workers against ionizing radiations. No worker under the age of 16 shall be engaged in work involving ionizing radiations; nor shall any worker be employed where he/she could be exposed to ionizing radiations contrary to qualified medical advice. Effective protection for all other workers shall be ensured in the light of current knowledge. Every effort shall be made to reduce to the lowest practicable level their exposure to ionizing radiations, and any unnecessary exposure shall be avoided. The Convention sets out various provisions concerning measures to be taken by the ratifying ILO Member State, the fixing of maximum permissible doses of radiation and amounts of radioactive substances that can be taken into the body, warnings of hazards, the instruction of workers in the precautions to be taken, the notification of work involving exposure, monitoring of workers and the workplace, and the appropriate medical examinations.

See **Occupational cancer.**

RAXEN *see* **European Monitoring Centre on Racism and Xenophobia (EUMC).**

Real wages

The goods and services that can actually be purchased with money wages. Real wages thus express the purchasing power of the actual income earned by an individual. When prices increase faster than money wages, the purchasing power of wages declines, workers have less disposable income and thus real wages fall. On the other hand, real wages (i.e. purchasing power) will rise when prices fall while wages remain stable, when wages increase but prices remain unchanged or when both wages and prices rise but wages rise at a faster rate than prices.

See **Wage; Wage indexation; Wages policy.**

Recognition and valuation of unpaid work

Measurement, in quantitative terms, including assessment and reflection of its value in satellite accounts, of unremunerated work that is outside the scope of national accounts (United Nations System of National Accounts). This includes, for example, domestic work, caring for children and other dependants, preparing food for the family, and community and other voluntary work.

Reconciliation of work and family/household life

The introduction of family and parental leave schemes, care arrangements for children and the elderly, and the development of a working environment structure and organization that facilitate the combination of work and family/household responsibilities for women and men.

See **Childcare; Parental leave; Parental leave and leave for family reasons.**

Redundancy

The permanent displacement of some part of the workforce of an organization as a result of plant closure or organizational or technological changes. The term “voluntary redundancy” refers to the method by which the individuals to be dismissed are selected. A predetermined reduction in the number of workers may be obtained by calling for volunteers who may choose redundancy in order to obtain a lump-sum payment, the amount of which may be determined by statutory provisions, the employer, or collective or individual bargaining.

See **Collective redundancies; Dismissal.**

Regulation *see* **Community legal instruments.**

Reinstatement

The re-employment of a worker by a former employer in the same or a similar job. Reinstatement may result from a decision by a court or tribunal that the worker was unfairly dismissed.

Religion

All European Union (EU) residents are free to practise their own religion. This freedom is enshrined in the EU Treaties, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

See **Charter of Fundamental Rights of the European Union; European Convention on Human Rights (ECHR).**

Remuneration

Any form of payment for work performed. It generally includes all wage payments and non-wage benefits.

See **Wage; Wages policy.**

Representatives of the employees

This refers to representatives provided for by the laws or practice of the European Union Member States, with the exception of members of administrative, governing or supervisory bodies, or companies that represent employees in such bodies in certain Member States.

Residence

All European Union (EU) citizens have the right to reside in another Member State, provided they can show that they either intend to work, or can support themselves and have sickness insurance.

See **Conditions of residence; Residents.**

Residents

All people legally residing in the European Union (EU), whether Member State or third-country nationals. The Charter of Fundamental Rights of the European Union, proclaimed in December 2000, notably applies to EU and third-country nationals.

See **Conditions of residence; Residence.**

Rest period

Any period which is not working time.

Retrenchment

The termination of the contract of a worker or a group of workers as a result of redundancy.

See **Redundancy; Termination of employment.**

Right to organize and collective bargaining

ILO Convention No. 98 (1949) concerns the protection of workers who are exercising the right to organize; the non-interference between workers' and employers' organizations; and the promotion of voluntary collective bargaining. Workers shall enjoy adequate protection against acts of anti-union discrimination.

They shall be protected more particularly against refusal to employ them by reason of their trade union membership, and against dismissal or any other prejudice by reason of union membership or participation in trade union activities. Workers' and employers' organizations shall enjoy protection against acts of interference by each other. This protection is extended in particular against acts designed to promote the domination, the financing or the control of workers' organizations by employers or employers' organizations. Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined by the Convention. Measures appropriate to national conditions shall be taken, where necessary, to encourage

Glossary of labour law and industrial relations

and promote the development and utilization of voluntary collective bargaining to “regulate terms and conditions of employment”.

See **Collective bargaining**.

Rural development

European rural development is closely linked to the Common Agricultural Policy (CAP) and measures to support employment. Accordingly, support measures in this sector have been traditionally based on different legal instruments pursuing different objectives. These measures establish an integrated policy of sustainable rural development that ensures greater coherence between rural development and the prices and markets policy of the CAP, and promotes all aspects of rural development by encouraging all the local players to become involved.

Rural development has thus become the second pillar of the CAP. With its links to agricultural activities and conversion, it is concerned in particular with: modernization of farms; safety and quality of food products; fair and stable incomes for farmers; environmental challenges; supplementary or alternative job-creating activities, in a bid to halt the drift from the country and to strengthen the economic and social fabric of rural areas; improvement of living and working conditions; and promotion of equal opportunities.

The rural development measures designed to achieve these objectives have been divided into two categories:

- flanking measures in the 1992 CAP reform: early retirement, agro-environmental measures; afforestation; and the scheme for less-favoured areas;
- measures to modernize and diversify farms: investment in farms; start-up schemes for young farmers; training; support for investments in processing and marketing plants; supplementary aid for forestry; promoting and restructuring agriculture.

See **Agenda 2000; Common Agricultural Policy (CAP); Rural workers' organizations**.

Rural workers' organizations

ILO Convention No. 141 (1975) concerns freedom of association for rural workers, encouragement of their organizations, and their participation in economic and social development. All persons working in agriculture have the right to establish and to join organizations of their own choosing, which shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. Regarding the exercise of this right, while respecting the law of the land, and regarding the acquisition of legal personality by the organizations concerned, the Convention reproduces the relevant provisions of the Freedom of Association and Protection of the Right to

Organize Convention, No. 87 (1948): national policy shall encourage rural workers' organizations as an effective means of ensuring these workers' participation in economic and social development and in the benefits which result, without discrimination. Ratifying ILO Member States shall promote the widest possible understanding of this policy.

See **Freedom of association and protection of the right to organize; Rural development.**

S

Safety, hygiene and health at work protection – SAFE programme

A European Community action programme to protect the health and safety at work of European Union citizens with a view to responding to developments in science and technology. The programme covered a series of measures establishing the framework for current and future activities over a five-year period from 1 January 1996 to 31 December 2000. In implementing the programme, the Commission was assisted by:

- an Advisory Committee on Safety, Hygiene and Health Protection at Work, composed of representatives of the European Union (EU) Member States and chaired by the Commission representative;
- a Committee of Senior Labour Inspectors, which would advise the Commission on specific matters;
- a Scientific Committee with the task of delivering specialist opinions on occupational exposure limits for chemical agents.

With a view to reinforcing cooperation between national labour inspectorates in connection with the application of European legislation and the incorporation of scientific expertise into the preparation of Community instruments, the Commission has, in addition to the existing official committees such as the Advisory Committee on Safety, Hygiene and Health Protection at Work, conferred formal status on the latter two committees.

In the interest of carrying out the programme successfully, the Commission stressed the need to encourage close cooperation with the EU Member States, third countries (CEEC) and specialized agencies of the United Nations (International Labour Organization, World Health Organization, etc.). A progress report on the activities implemented regarding safety, hygiene and health at work was drawn up at the end of 1997, while a final overall report giving an independent assessment of the main activities was produced on 31 December 2001.

See **European Agency for Health and Safety at Work; Health and safety at work; Labour inspection; Occupational health services; Occupational safety and health.**

Salary

The gross pay of a worker based on a specific annual amount irrespective of the hours actually worked. Salaries are traditionally paid fortnightly or monthly.

See Wage; Wages policy.

Sectoral social dialogue

Following the Council decision of May 1998 on the establishment of the sectoral social dialogue committees, 27 committees were set up at the joint request of the social partners (employers' and workers' organizations) in the sector concerned. This unequivocal success illustrates the European sectoral social dialogue's great potential for development. The European Commission wishes to continue its support for the flourishing European sectoral social dialogue and to promote the establishment of further committees so that all the main branches are covered. This is the proper level for discussion on many issues linked to employment, working conditions, vocational training, industrial change, the knowledge society, demographic patterns, enlargement and globalization.

Sector	Workers	Employers
Agriculture	EFFAT	GEOPA-COPA
Air transport	ECE, ETF	ACI Europe, AEA, ERA, IACA
Banking	UNI-Europa	EACB, ESBG, FBE
Cleaning	UNI-Europa	EFCI
Commerce	UNI-Europa	EuroCommerce
Construction	EFBWW	FIEC
Culture	EEA	PEARLE
Electricity	EMCEF, EPSU	EURELECTRIC
Footwear	ETUF-TCL	CEC
Furniture	EFBWW	UEA
Hotels & catering/tourism	EFFAT	HOTREC
Inland waterways	ETF	ESO/OEB, UINF
Insurance	UNI-Europa	ACME, BIPAR, CEA
Mining	EMCEF	APEP, CECISO
Personal services	UNI-Europa	CIC Europe
Postal services	UNI-Europa	POSTEUROP
Private security	UNI-Europa	CoESS
Railways	ETF	CER

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Glossary of labour law and industrial relations

Sector	Workers	Employers
<i>/cont'd...</i>		
Road transport	ETF	IRU
Sea fishing	ETF	EUROPECHE/COGECA
Sea transport	ETF	ECSA
Sugar	EFFAT	CEFS
Tanning	ETUF-TCL	COTANCE
Telecommunications	UNI-Europa	ETNO
Temporary work	UNI-Europa	CIETT Europe
Textiles/clothing	ETUF-TCL	EURATEX
Wood	EFBWW	CEI-Bois

See **Social dialogue (EU), Social dialogue (ILO).**

Segregation of the labour market *see* **Job segregation/employment segregation.**

Self-employed

European Union citizens who are self-employed have the right to establish themselves and provide their services to all Member States.

Self-employment

This is where someone works for himself/herself. Self-employed non-EU nationals may be admitted if they have sufficient resources to take up their activity.

See **Equality between men and women; Self-employed activity.**

Senior Labour Inspectors Committee (EU)

The Committee is the result of the European Union Commission Decision 95/319/EC of 12 July 1995 setting up a Committee of Senior Labour Inspectors. The Committee is a forum for discussion between the Commission and the representatives of the national authorities who are, amongst other things, responsible for monitoring the enforcement of secondary Community law on health and safety and who are consequently in direct contact with the businesses affected by it. The Committee provides the Commission with a channel for receiving information about any problems relating to the enforcement of secondary Community law. The Committee is also a forum for the national authorities to compare experience of the structure, methods and instruments of labour inspection.

Although the Committee's activities focus on health and safety at work, it also gives an opinion on matters covering other areas of Community social legislation, which have an impact on health and safety at work. All the EU Member States have ratified the ILO Labour Inspection Convention, 1947 (No. 81). This Convention lays down the main rules governing the establishment, organization, resources, powers and obligations, functions and responsibilities of the labour inspection system as an institution responsible for ensuring the protection of workers at work and promoting legislation adapted to the developing needs in the workplace. In many Member States, in addition to health and safety at work, labour inspectorates are also responsible for a whole range of areas comprising social benefits, pay, leave and working hours, employment relationships, environmental protection, and the management of employment and vocational training policies.

See **Labour inspection.**

Severance pay

The final payment made to a worker when his/her employment is terminated.

Sex-disaggregated statistics

The collection and separation of data and statistical information by sex to enable comparative analysis (sometimes referred to as gender disaggregated).

Sex discrimination, direct

When a person is treated less favourably because of his/her sex.

See **Burden of proof in cases of discrimination based on sex.**

Sex discrimination, indirect

When a law, regulation, policy or practice, which is seemingly neutral, has a disproportionate adverse impact on the members of a sex, unless the difference in treatment can be justified by objective factors.

See **Burden of proof in cases of discrimination based on sex.**

Sex/gender system

A system of economic, social and political structures, which sustain and reproduce distinctive gender roles and attributes of men and women.

See *entries under* **"Gender"**.

Sexual harassment

Unwanted conduct of a sexual nature or other conduct based on sex, affecting the dignity of women and men, including the conduct of superiors and colleagues at work. (See EU Council Resolution of 29 May 1990 and Commission Communication of 24 July 1996 concerning the consultation of management and labour on the prevention of sexual harassment at work.)

Sexual violence *see* **Gender-based violence; Violence at work.**

Shareholding and financial participation of employees

The European Community attaches importance to more widespread use of financial participation schemes without seeking active harmonization or a reduction in the existing wide range of available schemes. Encouragement at Community level of schemes for employees' financial participation is to be seen as a means of achieving a better distribution of the wealth generated by enterprises, while encouraging greater involvement of employees in the performance of their companies. With regard to the impact of such schemes, there are grounds for supposing that they have positive effects on employee motivation and productivity, and on the competitiveness of enterprises.

Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of employee participation in profits and enterprise results (including equity participation) calls for direct involvement of European Union (EU) Member States and the social partners. More specifically, the Recommendation invites the Member States to:

- ensure that legal structures are adequate to allow the introduction of the forms of participation referred to in the recommendation;
- consider the possibility of according incentives such as fiscal or other financial advantages to encourage the introduction of certain schemes;
- promote the introduction of participation schemes by facilitating the provision of appropriate information for all potentially interested parties;
- take account of experience acquired elsewhere in the European Community when selecting the types of scheme to be promoted;
- ensure that the social partners have a wide range of schemes or arrangements to choose from;
- ensure that this choice can be made at a level which, taking account of national practice, is as close as possible to the employee and to the enterprise;
- encourage consideration of the key issues set out in the report annexed to the proposal when new financial participation schemes are being prepared or when existing schemes are being reviewed;
- examine, after a period of three years following adoption of the Recommendation, the data available at a national level on the development of financial participation by employees and to communicate the results to the Commission; and
- enhance the social partners' awareness of these matters.

On 8 January 1997 the Commission adopted a report on the promotion of participation by employed persons in profits and enterprise results (including equity participation) in EU Member States (PEPPER II – 1996). The positive effects of PEPPER schemes (promoting participation by workers in profits and enterprise results) on profitability are widely recognized. Profit sharing invariably goes hand in hand with increased productivity. The divergence of policies adopted by Member States must be seen in the light of their traditions and practices with regard to financial participation:

- France and the United Kingdom have a long tradition of encouraging financial participation.
- Ireland, the Netherlands, Finland, Germany, Spain and Italy have started to promote the establishment of PEPPER schemes.
- In the other Member States, PEPPER schemes have been discussed, but official government support has been limited.

Most legislation on promoting financial participation schemes involves incentives such as fiscal or other financial advantages: tax-free issue of shares or bonds to employees; tax-free allowances on distributed profits; exemption from social security contributions, etc. Some countries offer these incentives to both employers and workers. Legislation in some Member States makes tax concessions subject to certain conditions: minimum percentage of personnel covered by the scheme; eligibility criteria; retention periods, etc. The report proposes a number of ideas to be explored with a view to the furthering of PEPPER schemes: development of national framework laws, clarification of the distinction between wages subject to social charges and the advantages derived from PEPPER schemes; wider eligibility; action via the social partners; fostering of information exchange between Member States, etc. At the moment there is no regular exchange of information between Member States either on legislation or good practices.

Shift work

Any method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including rotating patterns, which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of the day or week.

Shift worker

Any worker whose work schedule is part of shift work.

Shop steward *see* **Delegate/shop steward/union representative.**

Simplification of European legislation

Simplifying European legislation means weeding out the superfluous by rigorously applying the tests of whether it is necessary and proportionate. The exercise mainly involves the recasting and formal or informal consolidation of legislation. This concept has grown in importance since the White Paper on the Completion of the Single Market, and was explicitly put forward by the Edinburgh European Council in 1992. Since then a concentrated effort has been made to establish a market guaranteeing the four freedoms, but this has meant a wealth of European legislation. Simplifying this mass of law has now become a priority in order to ensure that Community action is transparent and effective. A declaration on the quality of the drafting of Community legislation is attached to the Final Act of the Intergovernmental Conference (1997). It recommends that the European Parliament, the Council and the Commission lay down guidelines for improving the form of legislation.

A pilot programme (Simplification of Legislation for the Internal Market – SLIM) covering four specific areas was launched in May 1996. The programme examined 17 different legislative sectors during five phases of activity between 1996 and 2002. In February 2003 the Commission's programme on Simplification was adopted. A range of initiatives (codification, consolidation, the removal of out-of-date texts and simplification) is planned, and regular progress reports will be presented.

In parallel, the European Convention on institutional reform, set up following the Laeken Declaration (2001), has a working group on the simplification of instruments and procedures. Members of this group have already alerted the Convention to the need to redouble efforts to recast and formally consolidate Community legislation and to improve legislative drafting.

Single European Act

The 1986 treaty which amended the Treaty of Rome (1957) and helped complete the European single market.

See **Treaties.**

Slavery *see* **Trafficking.**

Social Charter on Fundamental Workers' Rights *see* **Community Charter of the Fundamental Social Rights of Workers (Social Charter).**

Small and medium-sized enterprises *see* **Enterprise policy in the European Union.**

Social clause

The aim of a social clause would be to improve labour conditions in exporting countries (members of the World Trade Organization – WTO) by permitting

sanctions against exporters who fail to observe certain minimum labour standards formulated by the ILO. There is no agreement yet on its feasibility or desirability, though similar measures have been discussed for well over a century in other forums. It was discussed in December 1996 at the WTO Singapore Ministerial Conference, where ministers agreed that labour standards were a matter for the ILO. It is worth recalling that the 1954 international sugar and tin agreements contained, for example, a “fair labour standards” clause which sought to ensure that labour engaged in the production of the commodity concerned would enjoy fair remuneration, social security benefits and other conditions. The 1976 World Employment Conference held that the competitiveness of imports from developing countries should not be achieved at the expense of fair labour standards. Four years later, the first Brandt Report also recommended that fair labour standards should be internationally agreed to facilitate trade liberalization. The International Coffee Agreement of 2001 contains a clause promoting improved standards of living for populations engaged in the coffee sector.

See World Trade Organization (WTO).

Social conditionality

The attachment of social objectives to trade rules and making adherence to these rules conditional on the observance of certain social practices.

Social dialogue (EU)

According to European Union (EU) treaties and legislation, social dialogue is the term used to describe a joint consultation procedure involving the social partners at European level. It involves discussion, joint action and sometimes negotiations between the European social partners, and discussions between the social partners and the EU institutions. Social dialogue and the quality of industrial relations are at the centre of the European social model. At the Laeken (2001) and Barcelona (2002) European Councils and the preceding social summits, the Heads of State or Government, the social partners and the Commission emphasized the role of social dialogue at all levels in promoting modernization and change within the EU and in the candidate countries. Social dialogue was initiated by the European Commission in 1985 (see below), and ever since the Single European Act, which came into force in 1987, the Treaty has formally required the Commission to develop dialogue (Article 138-139, TEC). The Commission’s role, in accordance with the EC Treaty, is to “develop dialogue between the social partners at European level, which could, if the two sides consider it desirable, lead to relations based on agreement”. Furthermore, the new title on employment gives the social partners a significant role in the coordinated strategy for employment. That role has been emphasized still further by the recent developments in connection with the European Employment Pact.

General evolution. Initiated in 1985, the Val Duchesse social dialogue process aimed to involve the social partners represented by the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) in the internal market process. The Council is not represented. These meetings of the Social Dialogue Committee have resulted in a number of joint statements on employment, education and training and other issues. According to the Commission, the importance of this Committee will increase. In October 1991, the UNICE, the ETUC and the CEEP adopted a joint agreement calling for mandatory consultation of the social partners on Commission proposals in the area of social affairs, and an option for negotiation between social partners to lead to framework agreements. This agreement became enshrined in the 1991 Agreement on Social Policy (ASP), which was adopted by all Member States with the exception of the United Kingdom, and annexed to the Maastricht Treaty on European Union (1992).

At the *national level*, the two sides of industry are given the opportunity of implementing directives by way of agreement. At *Community level*, specific rules are laid down in the ASP. The Commission must consult management and labour before taking any action in the social policy field. An initial consultation should take place concerning the possible direction of Community action. If, after such consultation, the Commission considers Community action advisable, it will consult management and labour on the content of the envisaged proposal. Management and labour will forward to the Commission an opinion or, where appropriate, a recommendation. Alternatively, they may also inform the Commission of their wish to initiate, independently, a process of negotiation that could lead to the establishment of a direct agreement between the parties. The negotiation process may take up to nine months, and the social partners have the following possibilities: they may conclude an agreement and jointly request the Commission to propose that the Council adopt a decision on implementation; or having concluded an agreement between themselves, they may prefer to implement it in accordance with the procedures and practices specific to management and labour and to the EU Member States; or they may be unable to reach an agreement. In the last case, the Commission will resume work on the proposal in question and will forward the result of its deliberations to the Council.

Social dialogue (EU): Framework Agreement

A Framework Agreement is a halfway house between joint opinions and the collective agreements themselves. A product of social dialogue, it lays down guidelines for subsequent negotiations at decentralized levels (sectoral, regional, company, etc.) pending a bilateral agreement. Although the Framework Agreement is not binding, it is an expression of the contracting parties' desire to induce their members to respect its provisions.

Social dialogue (EU): Role of the joint opinions

The joint opinions are the formal expression of the results of social dialogue. While they do not impose any obligation or constraint on the parties involved, they represent a joint policy on issues that are of particular complexity even at national level, and must necessarily be the result of hard-won compromise between the parties concerned and delicate negotiation between their own members.

Social dialogue (EU): Standing Committee on Employment

The task of the Committee is to ensure, in compliance with the Treaties and with due regard for the powers of the institutions and organs of the Communities, that there should be continuous dialogue, joint action and consultation between the Council – or, where appropriate, the Representatives of the Governments of the European Union Member States – the Commission and the social partners in order to facilitate coordination by the Member States of their employment policies in harmony with the objectives of the Community. The Committee shall complete its work before any measures are adopted by the relevant institutions.

The work of the Committee shall involve the participation of:

- the Council or the representatives of the governments of the Member States; and, where appropriate:
- the Commission;
- employers' organizations;
- workers' organizations.

There shall be a maximum of 20 representatives of the social partners, divided into two delegations of equal size, i.e. ten workers' representatives and ten employers' representatives. The delegations of the social partners shall cover the whole economy, and shall be composed of European organizations representing either general interests or more specific interests of supervisory and professional staff, and small and medium-sized businesses. The Commission shall send the Chairperson of the Committee a list of these organizations on a regular basis. This list must take into account the way in which the two sides of industry are represented at European level. The Committee shall be chaired by a representative of the Member State holding the Presidency of the Council.

The Commission prepares and gathers the information that will enable the Committee to do its work. (See Decision 1999/207/EC of 9 March 1999, reforming the Standing Committee on Employment and repealing Decision 70/532/EEC.)

See Social dialogue and representativeness of social partners (EU).

Social dialogue (ILO)

According to the ILO, social dialogue is defined to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy. The definition and concept of social dialogue vary from country to country and from region to region, and they are still evolving. The enabling conditions for social dialogue are as follows:

- strong, independent workers' and employers' organizations with the technical capacity and access to the relevant information to participate in social dialogue;
- political will and commitment to engage in social dialogue on the part of all the parties;
- respect for the fundamental rights of freedom of association and collective bargaining; and
- appropriate institutional support.

For social dialogue to work, the State cannot be passive even if it is not a direct actor in the process. It is responsible for creating a stable political and civil climate that enables autonomous employers' and workers' organizations to operate freely, without fear of reprisal. Even when the dominant relationships are formally bipartite, the State has to provide essential support for the parties' actions by providing the legal, institutional and other frameworks that enable the parties to act effectively.

Social dialogue takes many different forms. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. Concertation can be informal or institutionalized, and often it is a combination of the two. It can take place at the national, regional or enterprise level. It can be inter-professional, sectoral or a combination of all of these. Social dialogue institutions are often defined by their composition. They can be bipartite, tripartite or "tripartite plus". The key tripartite actors are the representatives of government, employers and workers. At times, and depending on specific national contexts, the tripartite partners may choose to open the dialogue to other relevant actors in society in an effort to gain a wider perspective, to incorporate the diverse views of other social actors and to build a wider consensus. Social dialogue can take a variety of forms, ranging from the simple act of exchanging information to the more developed forms of concertation. The following is intended as a short-list of the most usual forms of social dialogue:

- Information-sharing is one of the most basic and indispensable elements for effective social dialogue. In itself, it implies no real discussion or action on the issues but it is nevertheless an essential part of those processes by which dialogue and decisions take place.
- Consultation goes beyond the mere sharing of information and requires an engagement by the parties through an exchange of views that in turn can lead to more in-depth dialogue.
- Tripartite or bipartite bodies can engage in negotiations and the conclusion of agreements. While many of these institutions make use of consultation and information-sharing, some are empowered to reach agreements that can be binding. Those social dialogue institutions that do not have such a mandate normally serve in an advisory capacity to ministries, legislators and other policy-makers and decision-makers.
- Collective bargaining is not only an integral – and one of the most widespread – forms of social dialogue, but it can be seen as a useful indicator of the capacity within a country to engage in national-level tripartism. Parties can engage in collective bargaining at the enterprise, sectoral, regional, national and even multinational level.

Social dialogue takes into account each country's cultural, historical, economic and political context. There is no "one size fits all" model of social dialogue that can be readily exported from one country to another. Social dialogue differs greatly from country to country, though the overriding principles of freedom of association and the right to collective bargaining remain the same. Adapting social dialogue to the national situation is key to ensuring local ownership of the process. There is a rich diversity in institutional arrangements, legal frameworks and traditions, and practices of social dialogue throughout the world. This is well illustrated by the series of country studies published by the InFocus Programme on Social Dialogue between 2001 and 2005. Social dialogue plays a key role in achieving the ILO's objective of promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equality, security and human dignity.

*See **Collective bargaining; Freedom of association and protection of the right to organize.***

Social dialogue and representativeness of social partners (EU)

The representation of the social partners at European level is determined according to three criteria laid down by the Commission since December 1993, namely that they should:

- be cross-industry or relate to specific sectors or categories and be organized at European level;

Glossary of labour law and industrial relations

- consist of organizations which are themselves an integral and recognized part of the European Union Member States' social partner structures;
- have adequate structures to ensure their effective participation in the consultation process.

The Commission advocates the widest possible availability of information and consultation on general topics, with due respect for autonomy as regards participation in negotiations.

Social dimension of the liberalization of international trade

A concept concerned with the effects on people of the structural changes brought about by the liberalization of international trade. Underlying this issue are the considerations that not everyone benefits from these changes, and that workers in certain occupations are under threat from imports made by workers in countries allowing inadequate labour standards. The International Labour Organization has established the World Commission on the Social Dimension of Globalization to address the issue.

See **Core labour standards; Social clause; World Commission on the Social Dimension of Globalization; World Trade Organization (WTO).**

Social dumping

An imprecise term for actions assumed to occur when goods produced by prison or sweated labour are exported at very low prices. Article XX(e) of the General Agreement on Tariffs and Trade (GATT) covers goods made by prison labour. More recently, the term "social dumping" has also been used for products allegedly produced and exported under conditions that do not reflect standards, other than technical ones, prevailing in developed economies.

See **Dumping; General Agreement on Tariffs and Trade (GATT); International labour standards; Social clause.**

Social exclusion *see* **Poverty.**

Social labelling

The practice of attaching a label or a mark to a product to indicate that it has been made under conditions of fair labour standards. There are no international rules on this, and many fear that compulsory social labelling would be the first step towards discriminatory treatment of sensitive products to protect some domestic industries. Proponents of the idea say that such is not their intent. Rugmark is an example of voluntary labelling. Products bearing this label are made without child labour.

See **Core labour standards; Social clause.**

Social partners

The Commission of the European Union (EU) is required to consult various social partners when it wants to submit proposals in certain fields. Social dialogue occurs via the three main organizations representing the social partners at European level: the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP). The Commission's job is therefore to take all necessary steps to encourage and facilitate consultation with the social partners on the future development of Community action and on the content of any proposals on the European Union's social policy, which is essentially concerned with the labour market. A consultative assembly of economic and social partners in Europe was created as early as 1957 with the Treaty of Rome. Its role was to involve these various interest groups in building the common market. Its members are drawn from representatives of three categories: employers, workers and independent occupations. The Single European Act, which entered into force in 1987, and the Treaty on European Union (in force 1999) increased the number of areas in which this assembly, the Economic and Social Committee, must be consulted by the other institutions when they wish to introduce legislation in the social sphere.

See European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP); European Trade Union Confederation (ETUC); Union of Industries of the European Community (UNICE); Social dialogue (EU); Social dialogue (ILO).

Social policy

In the context of the European Communities (EC), social policy has a much narrower ambit than is usually implied by the phrase: it refers specifically to employment matters, and that part of social policy relating to employer-worker relations. During the first decade of the three European Communities' existence, social policy had a very low profile and priority. It became much more important with the arrival of mass unemployment in the 1970s, and the EC adopted a Social Action Programme in 1974. From 1983, social policy had two priority areas: the training and employment of people aged 25 or under; and the provision of training and employment in the most economically disadvantaged regions of the EC. Social policy is administered by the European Commission through the European Social Fund (ESF).

As a result of changes introduced by the Treaty of Amsterdam, which came into force in 1999, all social policy measures can be adopted on the basis of a new Chapter within the Treaty. This has effectively created a new legal base for equal opportunities and equal treatment of men and women at work. Following the Treaty of Amsterdam, the Charter of Fundamental Rights of the European

Glossary of labour law and industrial relations

Union (2000) was drawn up. It restates many of the principles and goals underpinning social policy, including the aim of combating social exclusion.

See **Charter of Fundamental Rights of the European Union; European Social Fund (ESF); Incorporation of the Social Policy Agreement; Social Policy Agreement.**

Social Policy Agenda

This five-year programme of action (2000-05), outlined at the Lisbon European Council (March 2000), has the objective of “shaping a new Europe”. It seeks to ensure the positive and dynamic interaction of economic, employment and social policy within the European Union. Actions include creating more and better jobs, improving social protection, and enlarging international cooperation. A guiding principle is to strengthen social policy as a productive factor.

Social Policy Agreement

The Social Policy Agreement was signed by 11 of the European Union Member States in December 1991. It sets out the policy objectives for which the 1989 Community Charter of Fundamental Social Rights of Workers paved the way: promoting employment; improving living and working conditions; combating exclusion; developing human resources, etc. It also lays down the procedure for adopting social policy measures and acknowledges the vital part played by management and labour in this field.

The Treaty of Amsterdam has incorporated the Social Policy Agreement – with strengthened provisions – into the Social Chapter of the 1991 EC Treaty; this also involved the formal abolition of the Social Policy Protocol. A new legal base has been created for equal opportunities and equal treatment of men and women at work, and mention is now made of the fight against social exclusion. Finally, an explicit reference to fundamental rights has added a new dimension to the objectives of social policy.

See **Community Charter of the Fundamental Social Rights of Workers (Social Charter); Incorporation of the Social Policy Agreement; Social policy; Social Policy Protocol.**

Social Policy Protocol

Adopted by the European Council in December 1991 at Maastricht, the Protocol was annexed to the Treaty on European Union and marked further progress on the European Social Charter (1989). With the Social Policy Agreement now incorporated in the EC Treaty by the Treaty of Amsterdam, the Social Policy Protocol has been abrogated.

See **Social policy; Social Policy Agreement.**

Social security (and free movement of workers)

If guarantees of the right of residence and the right to employment are to be effective, the beneficiaries must enjoy adequate social welfare provision if they

move within the European Community (EC). Community-level coordination of social security schemes has been provided for under EC Regulations Nos. 1408/71 and 574/72, which guarantee employed workers, self-employed workers and students the same treatment in the field of social security as nationals of the host European Union Member State. These Regulations involve maintenance of acquired rights in all Member States, as well as the right to combine periods of social contributions and periods of pension contributions for the purpose of obtaining social benefits.

Regulation No. 1408/71 is one of the cornerstones of health care. However, over the years this Regulation has undergone profound changes. With a view to simplifying and clarifying the rules governing the coordination of social security systems, the Commission has presented a proposal for a Council Regulation to bring the Regulation into line with developments in national legislation and the interpretations of the Court of Justice. From now on the proposal provides for the extension of the provisions to all persons covered by the social security legislation of a Member State, and not only workers.

See Equality of treatment (social security); Maintenance of social security rights; Social security (minimum standards).

Social security (minimum standards)

ILO Convention No. 102 (1952) will establish, with the requisite flexibility, given the wide variety of conditions obtaining in different countries, minimum standards for benefits in the main branches of social security. The Convention deals in a single instrument with the nine main branches of social security, namely: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit.

Acceptance of three of these nine branches is sufficient for ratification. One at least of the three branches accepted shall be unemployment benefit, employment injury benefit, old-age benefit, invalidity benefit or survivors' benefit. A ratifying Member State may subsequently accept obligations arising out of other parts of the Convention. Article 3 authorizes a certain number of temporary exceptions for a Member State "whose economy and medical facilities are insufficiently developed". The Convention provides for medical care (and certain other benefits in kind in certain cases) and for cash benefits in the form of periodical payments. In addition to certain common provisions (such as definitions and administration, standards to be complied with by periodical payments, finance, and appeals), the Convention has provisions for each branch, appropriate to the definition of the contingencies covered, including minimum coverage (persons protected), the levels of benefits, their duration and the qualifying conditions for the beneficiaries. On these points, the Convention is formulated with the flexibility necessary to account for a variety of schemes and levels of development. The scope of coverage

Glossary of labour law and industrial relations

is generally determined in three ways, the choice of which rests with the ratifying State, with reference to classes of employees, classes of the economically active population, or means of residents.

In the case of periodical payments, the rate of benefit is determined having regard to the level of wages in the country concerned. Thus, the Convention provides – for the calculation of benefits – three formulas intended for adaptation to a variety of schemes: (a) proportional, or partially proportional benefits linked to the beneficiary's previous earnings or family support commitments (Article 65); (b) benefits set at uniform rates or benefits comprising at least a minimum rate based on the wage of an adult male labourer (Article 66); (c) benefits linked to the means of the beneficiary concerned, the amount of which benefit, where the beneficiary concerned has no other means justifying a reduction in benefit, is determined in the same way as in (b) (Article 67).

Non-national residents shall have the same rights as national residents. However, special rules may be prescribed as regards benefits payable out of public funds or in respect of transitional schemes (Article 68). Benefits may be suspended in certain cases, e.g. as long as the person concerned is absent from the territory of the State, or is maintained at public expense or at the expense of a social security institution, or is guilty of a specified misconduct (Article 69). Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity. The Convention has provisions with regard to the financing of benefits and provides that the ratifying State shall accept general responsibility for the due provision of the benefits and the proper administration of the institutions and services concerned. It provides that representatives of protected persons shall participate in the management of social security institutions, or be associated with them in a consultative capacity where the administration is not entrusted to an institution regulated by the public authorities or to a government department. The Convention does not apply to seafarers or sea fishermen.

See Equality of treatment (social security); Maintenance of social security rights; Social security (and free movement of workers).

Social subsidies

It is claimed that these occur when governments permit the existence, particularly in export industries, of labour standards lower than those applied internationally, or if they do not enforce their own standards. The perceived resulting lower operating costs of enterprises benefiting from these practices are seen as an indirect export subsidy. Analysis tends to indicate, however, that lower labour standards have little effect on export competitiveness and, indeed, that they may impede it. Nor is the concept of social subsidies an accepted part of the trade policy vocabulary.

See Core labour standards; Social clause; Social dumping; Trade and labour standards.

Socially responsible investing

The practice of taking into account social and economic criteria when making a decision to invest.

Special negotiating body

A body established, in accordance with EU Directive 94/45/EC of 22 September 1994 (on the establishment of a European Works Council) to negotiate with central management; and in accordance with Directive 2001/86/EC of 8 October 2001 (supplementing the Statute for a European Company with regard to the involvement of employees) to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the Statute for a European Company.

See Statute for a European Company.

State aid (EU)

Article 87, TEC (new Article III-56) states that “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market”. The European Commission and the Court of Justice have placed a very broad interpretation on the concept of “aid” as regards the body granting it, which may range from the State itself to a regional or local authority, from a body over which the State directly or indirectly exerts a decisive influence to a private-sector enterprise or a public corporation, etc. Accordingly, any advantage conferred by the State is regarded as state aid where it:

- confers an economic advantage on the recipient;
- is granted selectively to certain enterprises or products;
- may distort competition;
- affects trade between Member States.

The prohibition applies to a whole panoply of aid measures, whether direct (grants) or indirect (e.g. measures that relieve an enterprise of financial charges) and regardless of their basis or purpose. However, an absolute prohibition of state aid is impossible and Article 87.2 and 87.3, TEC, provides for a number of exemptions for aid that is compatible with the common market and for aid that may be compatible under certain conditions. On the basis of Article 88, TEC (new Article III-56), the procedural Regulation on state aid stipulates that any aid or any aid scheme must be notified to the Commission and approved by it before being implemented. However, the prior notification requirement is

Glossary of labour law and industrial relations

relaxed by the Regulation on horizontal state aid, which authorizes the Commission to exempt by way of regulation certain categories of aid including training aid, employment aid, aid for small and medium-sized enterprises, and aid of minor importance. By drafting new Community guidelines and frameworks, the Commission has clarified the conditions under which other forms of state aid pursuing horizontal objectives such as regional development aid, environmental aid and research aid may be granted.

Statistics *see* **Labour Statistics**.

Statute for a European Company

The Statute for a European Company, with the Latin name *Societas Europaea* (SE), became subject to Community law as of 8 October 2004. It will provide enterprises with an optional new instrument, which will make cross-border enterprise management more flexible and less bureaucratic, and should help improve the competitiveness of Community enterprises. These will make it possible for a company to be set up within the territory of the Community in the form of a public limited-liability company (Regulation 2157/2001), and to operate Community-wide while being subject to Community legislation directly applicable in all European Union (EU) Member States.

Several options will be available to enterprises from at least two EU Member States wishing to form an SE: a merger; a holding company; the creation of a subsidiary; or transformation into an SE. The statute will allow a public limited-liability company that has its registered office and head office within the Community to transform itself into an SE without going into liquidation. The SE will be entered in a register in the EU Member State where its registered office is situated, and must take the form of a company with share capital.

The rules relating to employee involvement in the SE are the subject of the Directive 2001/86/EC of 8 October 2001, whose provisions seek to ensure that the creation of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. Given the diversity of rules and practices in the EU Member States as regards the manner in which employees' representatives are involved in decision-making within companies, a single European model is not intended. Nevertheless, procedures for the information and consultation of workers at transnational level will be ensured. When rights to participate exist within one or more of the companies establishing an SE, those rights will be preserved through their transfer to the SE, once established, unless the parties involved decide otherwise within the special negotiating body, which brings together the employees' representatives of all companies concerned. Procedures for the information and consultation of workers at transnational level will also be ensured. The regulation on the Statute for a European

Company and the Council Directive supplementing the Statute for a European Company with regard to the involvement of employees will enter into force together, three years after adoption.

See **Community-scale group of undertakings; Consultation of employees in a European Company; Information of employees in a European Company; Involvement of employees in a European Company.**

Strike

A concerted temporary stoppage of or withdrawal from work by a group of workers of an establishment or several establishments to express a concern or to enforce demands affecting wages, working hours and/or working conditions. Strikes are characterized by varying degrees of formality and organization with respect to the involvement of, or their initiation by, union officials or work group members. They also vary in duration and significance, from short demonstrations for bargaining purposes to major and protracted industrial and political struggles. Strikers still consider themselves workers of the enterprise, with the right to return to their jobs once the dispute has been resolved. A strike is called a “wildcat strike” when no previous attempts were made to settle the dispute in another way and normal procedures were not followed.

See **Industrial action; Industrial conflict; Industrial dispute.**

Subcontracting *see* **Labour clauses (public contracts).**

Subsidiarity

A term that appeared first in 1931 in the Social Doctrine of the Catholic Church. The Encyclical “Quadragesimo Anno” defines it as a principle according to which “we cannot take away from the particulars and transfer to the community attributions that they are able to decide by themselves using their own means”. The Treaty establishing the European Community (EC Treaty) adopts this principle in Article 5. European subsidiarity is defined as follows:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

In other terms, according to the principle of subsidiarity, the Community acts only where its action provides added value with respect to national added values. Specifically, it is the principle whereby the European Union (EU) does not take action (except in the areas that fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality and necessity,

which require that any action by the EU should not go beyond what is necessary to achieve the objectives of the Treaty.

The Treaty of Amsterdam, which came into force in 1999, has taken up the overall approach that follows from this declaration in a Protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty. Two provisions of the Protocol are the systematic analysis of the impact of legislative proposals on the principle of subsidiarity and the use, where possible, of less binding Community measures. Each year the European Commission produces a report (*Better lawmaking*) for the European Council and the European Parliament, which is devoted mainly to the application of the subsidiarity principle.

The Convention on institutional reform established by the Laeken Declaration in December 2001 has prepared, through its Working Group on “Subsidiarity”, proposals with a view to taking more account of this principle without detracting from the aim of legislative simplification. It is suggesting the setting up of a political monitoring system (via an early warning system for national parliaments allowing them to deliver a reasoned opinion on a Commission proposal) or a judicial control system (creation of a subsidiarity chamber within the Court of Justice in order to strengthen ex post monitoring). The possibility of abolishing the Protocol on subsidiarity and replacing it by a number of Articles in the new treaty has also been raised.

See Laeken Declaration.

Subsidiary powers

Article 308, TEC, reflects the realization by those who drafted the Treaty of Rome (1957) that the powers specifically allocated to the Community (executive powers) might not be adequate for the purpose of attaining the objectives expressly set by the Treaties themselves (competence *ratione materiae*). This Article can be used to bridge that gap, since it lays down that “if action by the Community should prove necessary to attain ... one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures”. Since this provision gives the European Parliament a purely consultative role which does not take into account Parliament’s current legislative powers, its improper use could upset the institutional balance. To avoid this, the use of Article 308 as a legal basis is often accompanied by other Treaty Articles which accord Parliament a greater legislative role.

See Treaties.

Temporary work *see* **Fixed-term work; Posting of workers.**

Termination of employment

ILO Convention No. 158 (1982) concerns protection against termination of employment without valid reason. The Convention has very wide scope. In so far as its provisions are not made effective by means of collective agreements, arbitration awards or court decisions, or in another manner consistent with national practice, they shall be given effect by laws or regulations. The Convention provides that the employment of a worker shall not be terminated unless there is a valid reason connected with the capacity or conduct of the worker, or based on the operational requirements of the undertaking or service. It then enumerates those reasons which are *not* valid grounds for termination, such as union membership or participation in union activities at appropriate hours, seeking office or acting as a workers' representative, filing a complaint or participation in proceedings against an employer for violations of laws or regulations, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, absence from work during maternity leave and temporary absence from work because of illness or injury.

Convention No. 158 deals with the procedures to be followed for the termination of employment and for appeal against termination. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the Convention provides for either or both of two possibilities: (a) the burden of proving the existence of a valid reason shall rest on the employer; and/or (b) the competent bodies shall be empowered to reach a conclusion having regard to the evidence provided by the parties and according to procedures provided for by national law and practice. It provides for a reasonable period of notice to be given or compensation in lieu thereof, unless the worker is guilty of serious misconduct, and for a severance allowance and/or other forms of income protection (unemployment insurance or assistance, or other social security benefits). In the case of an unjustified termination of employment, if this cannot be reversed and/or the reinstatement of the worker is not practicable, adequate compensation is payable.

In the case of termination of employment for economic, technological, structural or similar reasons, there are more detailed provisions concerning the

Glossary of labour law and industrial relations

obligation on the employer to consult with the workers' representatives, to notify the competent authority as early as possible and to provide the relevant information.

See **Collective redundancies.**

“The four freedoms”

The free movement of goods, services, people and capital – the original *raison d'être* of the European Community.

Time-use survey

A measurement of the use of time by women and men, particularly in relation to paid and unpaid work, market and non-market activities, and leisure and personal time.

Title IV of the Treaty establishing the European Community (EC)

The legal basis for European Union legislation on justice and home affairs. Title IV of the EC Treaty covers free circulation of persons, asylum, immigration and judicial cooperation in civil matters. The European Community institutions are fully involved in the decision-making process.

See **Treaties.**

Trade and labour standards

This concerns the question whether trade rules should be used to promote minimum labour standards in exporting countries. Like other new trade issues, it has actually been around for some time. The 1919 Constitution of the ILO had the adoption and promotion of labour standards as a main objective. Some consider that the concept of “fair labour standards” derives from Article 23(a) of the Covenant of the League of Nations in which members endeavoured “to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend”. In 1943, the ILO recommended that “wherever existing conditions are unsatisfactory, there should be arrangements to ensure that labour employed in the production of controlled commodities receive fair remuneration and adequate social security protection and that other conditions of employment are satisfactory”. Some of the international commodity arrangements contain provisions exhorting members to promote fair labour standards.

See **Child labour; Core labour standards; Social clause; Social dumping; Social subsidies.**

Trade union

An association of workers organized to project and promote their common interests.

See **Freedom of association and protection of the right to organize.**

Trafficking

Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

See **Abolition of forced labour; Child labour.**

Training *see* **Professional training; Vocational training.**

Transfer of undertaking (safeguarding of employees' rights)

In accordance with Directive 2001/23/EC of 12 March 2001 (on the approximation of the laws of the European Union (EU) Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses), the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee. Directive 2001/23 shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger. Transfer, within the meaning of the Directive, is a transfer of an economic entity that retains its identity, meaning an organized grouping of resources with the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

The transferor and the transferee are jointly and severally liable in respect of obligations that arose before the date of transfer from a contract of employment or an employment relationship existing on the date of the transfer (Article 3.1). A failure by the transferor to notify the transferee of any such right or obligation shall not affect the transfer of that right or obligation and the rights of any employees against the transferee and/or transferor in respect of that right or obligation (Article 3.2). Following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement (Article 3.3). The transfer of the undertaking, business or part of the undertaking or business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organizational reasons entailing changes in the workforce (Article 4.1). If the contract of employment or the employment relationship is terminated because the

Glossary of labour law and industrial relations

transfer involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship (Article 4.2). Unless Member States provide otherwise, Articles 3 and 4 shall not apply to any transfer of an undertaking, business or part of an undertaking or business where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of a competent public authority (which may be an insolvency practitioner authorized by a competent public authority) (Article 5.1). If the undertaking, business or part of an undertaking or business preserves its autonomy, the status and function of the representatives or of the representation of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer by virtue of law, regulation, administrative provision or agreement, provided that the conditions necessary for the constitution of the employee's representation are fulfilled (Article 6.1). If the term of office of the representatives of the employees affected by the transfer expires as a result of the transfer, the representatives shall continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States (Article 6.2).

See **Collective redundancies; Transferee; Transferor; Transferor's rights.**

Transferee

Any natural or legal person who by reason of a transfer becomes the employer in respect to the undertaking, business or part of the business.

Transferor

Any natural or legal person who by reason of a transfer ceases to be the employer in respect an undertaking, business or part of a business.

Transferor's rights

According to European Union (EU) legislation, rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee. Following the transfer, the transferee has the obligation to continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination of the collective agreement or the entry into force or application of another collective agreement. EU Member States may limit the period for observing such terms and conditions, with the provision that it shall not be less than one year.

The transfer of an undertaking, business or part of a business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This

provision shall not stand in the way of dismissals that may take place for economic, technical or organizational reasons entailing changes in the workforce. If the contract of employment or the employment relationship is terminated because the transfer is a legal transfer or merger and involves a substantial change in working conditions to the detriment of the worker, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship. If the business preserves its autonomy, status and function, as laid down by the laws, regulations or administrative provisions of the EU Member State, the representatives or representation of the workers affected by the transfer shall be preserved. If the term of office of the representatives of the workers affected by a transfer expires as a result of the transfer, the representatives shall continue to enjoy the protection provided by the laws, regulations, administrative provisions or practice of the Member States. (See Directive 2001/23/EC of 12 March 2001.)

See **Transfer of undertaking (safeguarding of employees' rights); Transferee; Transferor.**

Treaties

European integration is based on four founding treaties:

- the *Coal Treaty* establishing the European Coal and Steel Community (ECSC), which was signed on 18 April 1951 in Paris, entered into force on 23 July 1952 and expired on 23 July 2002;
- the *Treaty establishing the European Economic Community* (EEC);
- the *Treaty establishing the European Atomic Energy Community* (Euratom), which was signed (along with the EEC Treaty) in Rome on 25 March 1957, and entered into force on 1 January 1958. These Treaties are often referred to as the “Treaties of Rome”. When the term “Treaty of Rome” is used, only the EEC Treaty is meant;
- the *Treaty on European Union*, which was signed in Maastricht on 7 February 1992, and entered into force on 1 November 1993. The Maastricht Treaty changed the name of the European Economic Community to simply “the European Community”. It also introduced new forms of cooperation between the Member State governments – for example on defence, and in the area of justice and home affairs. By adding this intergovernmental cooperation to the existing Community system, the Maastricht Treaty created a new structure with three pillars, which is political as well as economic. This is the European Union (EU).

The founding treaties have been amended on several occasions, in particular when new Member States acceded. There have also been more far-reaching

Glossary of labour law and industrial relations

reforms bringing major institutional changes and introducing new areas of responsibility for the European institutions:

- the *Merger Treaty*, signed in Brussels on 8 April 1965 and in force since 1 July 1967, provided for a Single Commission and a Single Council of the then three European Communities;
- the *Single European Act* (SEA), signed in Luxembourg and The Hague, and entered into force on 1 July 1987, provided for the adaptations required for the achievement of the Internal Market;
- the *Treaty of Amsterdam*, signed on 2 October 1997 and entered into force on 1 May 1999: it amended and renumbered the EU and EC Treaties. Consolidated versions of these two treaties are attached to it.

The measures introduced were discussed during the 1996 Intergovernmental Conference (IGC) review of the Treaty on European Union (TEU), which sought to address changing circumstances in Central and Eastern Europe, and the new arrangements that would be required on EU enlargement. High priority was given to measures that combat high unemployment, extend citizens' rights and improve democratic accountability and participation in EU institutions. Governments were to coordinate their employment strategies, and an Employment Committee was established to oversee the coordination process. Greater efforts were encouraged in combating discrimination on grounds of sex, race, ethnic origin, religion or belief, age, disability or sexual orientation. Member States were also required to address gender inequality and protect citizens against misuse of data stored in institutions of the European Communities. New and continued efforts in the fields of public health, the environment and sustainable development, and consumer protection, were also to be encouraged.

The Protocol on social policy was incorporated into the revised Treaty of Rome. Membership of the EU was made more explicitly conditional in that successful applicants had to agree to abide by the principles of human rights and fundamental freedoms, liberty and democracy in relation to their citizens, as set down by the EU, or face suspension of certain membership rights, including the right to vote. Despite its innovations and reforms, the Treaty failed to introduce the institutional reforms necessary to prepare the EU for enlargement. Even before it entered into force on 1 May 1999, preparations were being made for a further IGC that would lead to the Treaty of Nice in 2001.

- the *Treaty of Nice*, signed on 26 February 2001, entered into force on 1 February 2003. This treaty, the former Treaty of the EU and the Treaty of the EC were merged into one consolidated version. The Treaty of Nice notably made the European Parliament a co-legislator on asylum policy and judicial

cooperation in civil matters. It was intended to prepare the European Union (EU) for enlargement by introducing a series of staged reforms to the institutions, notably by reducing the size of the European Commission to a maximum of one national from each Member State, re-weighting votes within the Council of the European Union, essentially to the advantage of the larger Member States, and re-allocating seats in the European Parliament. Unlike earlier treaties such as the Single European Act and the Treaty of Amsterdam, the Treaty of Nice did little in the way of increasing the competences of the EU and the European Communities (EC) beyond a slight extension of the treaty-making powers of the EC to include services and the insertion into the Treaty of Rome of a new title on economic, financial and technical cooperation with third countries. However, when adopting the Treaty, the Member States set in motion a process that could lead to significant increases in the activities of the EU. Equally, it could lead to limits being placed on them. This was later expanded on in the Laeken Declaration (2001) and provided with a forum for expression in the Convention on the Future of Europe launched in February 2002, which concluded its work with the publication of a draft European Constitution on 18 July 2003.

The EU Treaties state that the European Union is founded on the principle of liberty, democracy, human rights, fundamental freedoms and the rule of law. These principles have been re-emphasized in the:

- *Treaty establishing a Constitution for Europe*, signed by Heads of Government of the 25 Member States in Rome on 29 October 2004.

See **Charter of Fundamental Social Rights of Workers; Convention on the Future of Europe; European Communities; European Council; European Union citizenship; Fundamental rights; Intergovernmental Conference (IGC); Laeken Declaration.**

Tripartism

The active interaction of government, employers and workers (through their representatives) as equal and independent partners in efforts to seek solutions to issues of common concern. A tripartite process may involve consultation, negotiation and/or joint decision-making, depending on arrangements agreed between the parties involved. These arrangements may be ad hoc or institutionalized.

See **International Labour Conference; International labour standards.**

Tripartite consultation (international labour standards)

ILO Convention No. 144 (1976) concerns effective consultation between the representatives of the government, of employers and of workers on international labour standards. The ratifying ILO Member State undertakes to operate

Glossary of labour law and industrial relations

procedures that ensure effective consultation between representatives of the three groups on:

- government replies to questionnaires concerning items on the agenda of the International Labour Conference and their comments on proposed texts to be discussed by the Conference;
- proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to Article 19 of the Constitution of the ILO;
- the re-examination at appropriate intervals of non-ratified Conventions and of Recommendations to promote their implementation and ratification as appropriate;
- questions arising out of reports on ratified Conventions to be made under Article 22 of the Constitution of the ILO;
- proposals for the denunciation of ratified Conventions.

The nature and form of such procedures shall be determined in accordance with national practice after consultation with the representative organizations of employers and workers, where these exist. These organizations shall freely choose their representatives for the purpose of these procedures. Employers and workers shall be represented on an equal footing on any competent bodies. Consultations shall take place at agreed intervals, but at least once a year. When appropriate, the competent authority shall issue an annual report on the working of the procedures.

See **ILO Constitution; International Confederation of Free Trade Unions (ICFTU); International Organisation of Employers (IOE); Tripartism; World Confederation of Labour (WCL).**

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

A non-binding set of principles which became effective in 1978, adopted by the International Labour Organization. It is aimed at encouraging the positive contribution that multinational enterprises can make to economic and social progress. It is also aimed at minimizing and resolving difficulties that may arise through the operation of such enterprises. The Declaration exhorts multinational enterprises to take fully into account the established policy objectives of host countries. It sets out principles governing employment, training, conditions of work and life, and industrial relations. The Declaration is relevant to the consideration of trade and labour standards.

See **OECD Guidelines for Multinational Enterprises; Social clause; Social dimension of the liberalization of international trade; Social dumping; Trade and labour standards.**

U

Underground work (women)

ILO Convention No. 45 (1935) prohibits the employment of women for underground work in any mine. No female, whatever her age, shall be employed for underground work in any mine. Possible exemptions from the prohibition are as follows: females holding positions of management who do not perform manual work; females employed in health and welfare services; females who, in the course of their studies, spend a period of training in the underground parts of a mine, or who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation.

Unemployment

A measure of the number of persons who are registered as being without work and currently available for work, as compared to the total labour force.

See **Employment; Employment and human resources development; Employment policy; Employment promotion and protection against unemployment; Employment services.**

Unfair dismissal

The termination of employment of a worker that a tribunal holds to be unfair, taking into account all the circumstances surrounding the dismissal. It is sometimes referred to as harsh or unjust dismissal.

See **Dismissal; Termination of employment.**

Union of Industrial and Employers' Confederations of Europe (UNICE)

This is a transnational federation of employers' associations. UNICE is one of the earliest (founded in 1958) and most influential of the pressure groups operating in Brussels. It represents the interests of industry as a whole, and is a confederation comprising 36 national federations of major business associations from 30 European countries. UNICE plays an informal and a formal role in European public affairs, with priorities centring on market liberalization and deregulation, but it remains less enthusiastic about initiatives in the area of social policy.

UNICE has as one of its objectives the promotion and elaboration "of an industrial policy in a European spirit", which is qualified by the statement that it "should mainly consist in taking into consideration the industrial imperatives in the various policies of the European Communities and not become an

Glossary of labour law and industrial relations

instrument of intervention”. It has therefore tended to oppose measures such as the proposed Statute for a European Company (SE), which threatened to place restraints upon its members, although on occasion its impact on the European Communities has been weakened by differences of interest between both its economic and its national components. UNICE operates as one of the Commission’s social partners alongside the European Trade Union Confederation (ETUC).

See **European Trade Union Confederation (ETUC); International Confederation of Free Trade Unions (ICFTU); Statute for a European Company (SE).**

Union representative *see* **Delegate/shop steward/union representative.**

Unpaid/unremunerated work

Work that carries no direct remuneration or other form of payment.

See **Recognition and valuation of unpaid work.**

Val Duchesse

A chateau on the outskirts of Brussels variously associated with the European Communities and the European Union. It was here that the Spaak Report was drawn up in 1955-56. In 1985, the chateau gave its name to the process of social dialogue between the employers represented by the Union of Industrial and Employers' Confederations of Europe (UNICE), employees represented by the European Trade Union Confederation (ETUC), and the European Centre of Public Enterprises (CEEP).

See **European Trade Union Confederation (ETUC); Union of Industrial and Employers' Confederations of Europe (UNICE); Social dialogue (EU).**

Violence at work

A general definition has yet to be agreed in the international arena. At an Expert Meeting organized by the European Commission in Dublin in May 1995, the following definition was proposed: "incidents where persons are abused, threatened or assaulted in circumstances related to their work, involving an explicit or implicit challenge to their safety, well-being and health". In this definition, "abuse" is used to indicate all behaviours which depart from reasonable conduct and involve the misuse of physical or psychological strength; "assault" generally includes any attempt at physical injury or attack on a person including actual physical harm, and "threats" encompass the menace of death, or the announcement of an intention to harm a person or damage his/her property. The ILO code of practice *Workplace violence in services sectors and measures to combat this phenomenon*, adopted in 2003 (published in 2004), defines workplace violence as "[A]ny action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of, his/her work". It goes on to distinguish between "internal workplace violence", which takes place between workers, including managers and supervisors, and "external workplace violence", which takes place between workers (and managers and supervisors) and any other person present at the workplace.

The definition of work or the workplace causes problems in relation to the issue of violence at work, affecting in turn the statistics on workplace violence. Standard definitions, related to physical settings, exclude many high-risk mobile

or geographically diverse occupational activities such as those conducted by law enforcement officials, taxi drivers or journalists, as well as occupational groups whose work takes them to people's homes, like meter readers, plumbers and postal officials, or those who use their own homes as their workplace. Trying to meet these concerns, the ILO code of practice defines "workplace" as "[A]ll places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer".

The code recognizes that for some parties, consideration of the prevention and aftermath of workplace violence is a human resources management issue, while for others it is a safety and health issue. It advocates a proactive approach by governments, employers, workers and their representatives, taking into consideration the occupational safety and health management systems approach. Specifically, it calls for a clear policy statement of intent to be issued and communicated by the top management. It also makes provisions regarding the allocation of responsibilities for implementation of the policy, communication to all concerned, awareness raising and social dialogue.

The code proposes a risk assessment approach to the problem of violence at work, comprising control measures such as development of strategies to combat violence at the workplace, awareness-raising and cooperation on combating workplace violence; and organizational preventive measures.

Vocational rehabilitation and employment (disabled persons)

ILO Convention No. 159 (1983) aims to ensure suitable employment and social integration for disabled persons, in conditions of full participation and equality. The ratifying Member State shall, in accordance with national conditions and possibilities, implement a policy of vocational rehabilitation and employment of disabled persons and ensure that the measures taken be available to all categories concerned. The representative organizations of employers and workers, as well as the representative organizations of and for disabled persons, shall be consulted on the implementation of this policy, which shall be based on the principle of equal opportunity between disabled workers (men and women) and workers generally (though not excluding special positive measures).

Suitably adapted services for vocational guidance and vocational training, placement, employment, and so on, shall be made available to disabled persons. The Convention provides for the development of these services in rural areas and remote communities, as well as for the training of specialized counsellors. The term "disabled person" means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment. Detailed provisions are contained in the ILO Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), and in the Vocational Rehabilitation and Employment

(Disabled Persons) Recommendation, 1983 (No. 168), which supplement Convention No. 159 and the preceding Recommendation No. 99.

See **Disability strategy of the European Union; Disabled people; Discrimination; Non-discrimination principle.**

Vocational training

Any form of education that prepares for a qualification for a particular profession, trade or employment, or which provides the necessary skills for such a profession, trade or employment. (See Court of Justice of the European Communities, Case 293/83 Gravier [1985].) The European Union is developing a common policy for admitting non-EU nationals for such training.

See **Human resources development; Professional training.**

Vredeling initiative

Named after Henk Vredeling, a former Commissioner responsible for employment and social affairs from the Netherlands, the Vredeling initiative was an attempt initiated by the European Commission in 1980 to establish a company statute. While it failed to gain acceptance in the Council of Ministers, its ideas concerning worker representation on company boards were later incorporated into the Charter of Fundamental Social Rights of Workers (1989).

See **Charter of Fundamental Social Rights of Workers; Council of the European Union; Workers' representatives (EU); Workers' representatives (ILO).**

W

Wage

The payment in exchange for labour provided under a contract of employment. Wages are calculated according to time-rate or piece-rate systems. The gross wage is the wage before deduction of taxes and other authorized deductions.

Wage indexation

A process whereby wages are regularly adjusted according to the movements of a price index reflecting the cost of living.

Wages policy

The guidelines adopted by governments, tribunals, trade unions and employers on the desirable rate of movement in money wages, the factors determining wages, and the relationship between particular wage rates and others.

See **Equitable wages**.

Weekly rest (commerce and offices)

ILO Convention No. 106 (1957) aims for at least 24 consecutive hours of rest per week. It lays down the standard of a weekly rest period of not less than 24 consecutive hours in the course of each period of seven days. Its provisions are similar to the Weekly Rest (Industry) Convention, 1921 (No. 14), as regards the simultaneous granting of the rest period to all staff and its coinciding with the day of rest established by the traditions or customs of the country or district. Regarding the means of giving effect to its provisions, the Convention lists the following: statutory wage-fixing machinery; collective agreements; arbitration awards; any other manner consistent with national practice as may be appropriate under national conditions; or, otherwise, national laws or regulations. It applies to all public or private trading establishments, institutions and administrative services in which the persons employed are mainly engaged in office work, including offices of persons engaged in liberal professions.

The Convention also covers the administrative services of a certain number of other establishments, but authorizes, at the same time, certain exclusions, special schemes and temporary exemptions. Where special schemes or temporary exemptions apply, a compensatory rest period of equivalent duration shall be

granted. The application of the measures taken in accordance with its provisions shall not entail any reduction of the income of the persons covered by the Convention. It shall be subject to adequate supervision and inspection, and entail appropriate penalties to ensure enforcement.

See Weekly rest (industry).

Weekly rest (industry)

ILO Convention No. 14 (1921) promotes at least 24 consecutive hours of rest per week. The whole of the staff employed in any industrial undertaking shall enjoy, in every period of seven days, a period of rest comprising at least 24 consecutive hours. This period of rest shall, wherever possible, be granted simultaneously to all staff of each undertaking and shall coincide with the days already established by the traditions or customs of the country or district. Certain exceptions may be authorized, for which, as far as possible, compensatory periods of rest shall be provided. Employers shall make known the days and hours of collective rest to all staff by notices or otherwise, and shall keep a roster of special systems of rest.

See Weekly rest (commerce and offices).

Women *see* **Discrimination (employment and occupation); EQUAL; Equal opportunities; Equal pay; Equal treatment; Equal treatment in employment and occupation; Equal treatment for men and women; Fundamental rights; Women's rights.**

Women's rights

Women's rights have become an important European Communities (EC) concern, based initially upon Article 141, TEC (new Article III-108), as amended by the Treaty of Amsterdam (in force 1999), which committed the European Union (EU) Member States to ensuring that "the principle of equal pay for male and female workers for equal work or work of equal value is applied". Various directives require the EU Member States to amend their laws to exclude any form of sex discrimination and to ensure equality in training, appointments, promotion and pay. Workers who believe they are the victims of discrimination have the right to take their case to a tribunal without fear of dismissal: the Court of Justice can act as the final arbiter as to whether national laws conflict with EC rules. Discrimination in social security systems was banned in 1978, and in 1986 it was decreed that discrimination in occupational pension schemes had to end by 1993. In 1997 the Council of the European Union adopted a Directive on sex-discrimination cases (97/80/EC of 15 December 1997), whereby the plaintiff and defendant were to share the burden of proof. The European Commission has also launched a number of special action schemes. In May 1998 the EU's first conference on women's employment was held in Belfast.

See **Discrimination (employment and occupation); EQUAL; Equal opportunities; Equal pay; Equal treatment; Equal treatment in employment and occupation; Equal treatment for men and women; Fundamental rights; Women's rights.**

Women's studies/gender studies

An academic, usually interdisciplinary, approach to the analysis of women's situation and gender relations, as well as the gender dimension of all other disciplines.

Worker

In European Union labour law, the definition of a worker is that which applies in the law of the Member State.

Workers' participation

A principle as well as informal and formal processes, established in an enterprise, whereby workers or their representatives participate with management, on a cooperative basis, in resolving issues of common concern. Workers' participation can take various forms, for example, informal discussion between managers and workers; information sharing; consultation; collective bargaining; joint decision-making in workplace committees, works councils or similar bodies; worker/trade union membership in management bodies; self-managed work groups; and financial participation.

See **Workers' representatives (EU); Workers' representatives (ILO); Workers' rights.**

Workers' representatives (EU)

In European Union (EU) labour law, the term refers to the definition provided for by the laws and practices of the Member States of the EU.

Workers' representatives (ILO)

ILO Convention No. 135 (1971) concerns protection of workers' representatives in the undertaking and facilities to be afforded to them. Workers' representatives recognized as such under national law or practice shall be protected against any prejudicial act, including dismissal, based on their status. This protection covers their activities as workers' representatives, union membership or participation in union activities, in conformity with existing laws or collective agreements or other jointly agreed arrangements. They shall be afforded facilities in the undertaking to enable them to carry out their functions promptly and efficiently; the granting of such facilities shall not impair the efficient operation of the undertaking. Effect may be given to the Convention through national laws or regulations, collective agreements or in any other manner consistent with national practice.

See **Collective bargaining; Trade union.**

Workers' rights

Workers' rights were referred to in the Treaty of Rome (1957), which obliged the European Communities Member States to promote the improvement of living and working conditions for workers, and required them to collaborate on a number of questions relating to employment. Most European Communities' activities have been devoted to improving working conditions through the implementation of several directives on occupational health and safety. Other directives relate to the principle of freedom of movement. Restrictions on free movement can be applied by the Member States only on grounds of a risk to public order, safety or health, or where jobs are in a particular sector of public administration. Persistent efforts by the European Commission to establish workers' participation in company decision-making achieved success with the signing of the Charter of Fundamental Social Rights of Workers (1989). Workers' rights are also prominent in the Charter of Fundamental Rights proclaimed in December 2000.

See **Safety, Hygiene and Health Protection at Work – SAFE Programme; Charter of Fundamental Rights of the European Union; Charter of Fundamental Social Rights of Workers; European Foundation for the Improvement of Living and Working Conditions.**

Workers with family responsibilities

ILO Convention No. 156 (1981) aims to create effective equality of opportunity and treatment for men and women workers with family responsibilities. The Convention applies to men and women workers with responsibilities for their dependent children or other members of their immediate family where such responsibilities restrict their possibilities of participating in economic activity. It provides that the ratifying Member State shall make it an aim of national policy to enable these persons to engage in employment without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. All measures compatible with national conditions and possibilities shall be taken to enable the workers in question to exercise their right to free choice of employment and to take account of their needs in terms and conditions of employment and in social security.

The Convention then provides for corresponding measures to be taken in community planning and in the development or promotion of community services such as childcare, and family services and facilities. It provides for information and education to engender broader understanding of the principle of equality of opportunity and treatment for men and women workers, and of the problems of workers with family responsibilities. It also lays the basis for specific measures in the field of vocational guidance and training. The Convention states that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

See **Childcare; EQUAL; Equal opportunities.**

Working environment (air pollution, noise and vibration)

ILO Convention No. 148 (1977) provides that, as far as possible, the working environment shall be kept free from any hazard due to air pollution, noise or vibration. The scope of the Convention is general. Like the Occupational Safety and Health Convention, 1981 (No. 155), it applies to all branches of economic activity. The ratifying Member State may, however, accept the obligations of the Convention separately in respect of air pollution, noise and vibration. To achieve the aim of the Convention, technical measures shall be applied to new plant or processes, or added to existing plant or processes. Where this is not possible, supplementary organizational measures shall be taken instead. To this end, national laws or regulations shall prescribe that measures be taken for the prevention and control of, and protection against, occupational hazards in the working environment due to air pollution, noise and vibration.

Provisions concerning the practical implementation of the measures so prescribed may be adopted through technical standards, codes of practice and so on. The Convention provides for associating representatives of employers and workers in this task and for consultation with their respective organizations generally. Employers are responsible for compliance with the prescribed measures. Workers shall be required to comply with safety procedures. Supervision shall be ensured by inspection services. The Convention enumerates various measures for prevention, cooperation at all levels, the information of all concerned, the notification of authorities, supervision of the health of workers, and so on.

See **Occupational safety and health.**

Working time (ILO)

Any period during which the worker is working at the employer's disposal and carrying out his/her activity or duties, in accordance with national laws and/or practice.

The International Labour Conference has adopted 25 Conventions and 14 non-binding Recommendations in the area of working time, beginning with its first Convention in 1919. These standards cover a range of subject-matter including hours of work, night work, weekly rest, paid leave, part-time work and workers with family responsibilities.

The Hours of Work (Industry) Convention, 1919 (No. 1), introduced the standard of an eight-hour day and 48-hour week, which was later extended to workers in commerce and offices by the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). The Forty-Hour Week Convention, 1935 (No. 47), advocates the principle of a 40-hour week, a principle further developed in the Reduction of Hours of Work Recommendation, 1962 (No. 116), which affirms the 40-hour week as a social standard to be reached progressively.

The right to a minimum period of weekly rest was established for industrial workers in the Weekly Rest (Industry) Convention, 1921 (No. 18), and later

extended to workers in commerce and offices by the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 103). Both of these instruments fix a minimum of 24 hours of uninterrupted rest every seven days, although the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 106), suggests a 36-hour rest period.

Paid annual holidays became the subject of international standards in 1936 with the adoption of the Holidays with Pay Convention (No. 47). It sets a minimum entitlement of six days' paid annual holiday for one year of service, later improved upon in the Holidays with Pay Convention (Revised), 1970 (No. 1329, which provides for a minimum annual holiday of three weeks.

In more recent years, the Workers with Family Responsibilities Recommendation, 1981 (No. 165), suggests a progressive reduction of hours of work and the introduction of more flexible working time arrangements for workers with families; the Night Work Convention, 1990 (No. 171), incorporates a range of protective measures for night workers; and the Part-Time Work Convention, 1994 (No. 175), provides for the equitable treatment of part-time workers.

See Working time (organization of); Working time in the maritime sector (ships using Community ports); Working time of seafarers.

Working time (organization of)

EU Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organization of working time (amended by Directive 2000/34/EC of 22 June 2000) obliges all European Union (EU) Member States to adopt minimum requirements covering certain aspects of the organization of working time connected with workers' health and safety.

The Directive covers initially all sectors of activity except transport, activities at sea and the activities of doctors undergoing training. Since the amendment of June 2000, workers belonging to these three categories have been covered by certain provisions governing rest periods, breaks, working hours, paid holidays and night work. Certain Articles of the initial directive do not apply to these categories, but ad hoc measures have been adopted, such as the establishment of a maximum number of working hours or, alternatively, a minimum number of rest hours for workers on board shipping vessels at sea.

The Directive gives a definition of the terms "working time", "rest period" and "night work". Night work is any period of not less than seven hours, as defined by national legislation and including in all cases the period from 12 midnight to 5 a.m. A night worker is any worker who performs at least three hours of his/her daily work or a part of his/her annual work (as defined by the EU Member States) during the night work period; "shift work" is any method of organizing work whereby workers succeed each other in the same tasks in accordance with a given time schedule at different times over a given period of days or weeks.

Glossary of labour law and industrial relations

Directive 2000/34/EC (amending Directive 93/104/EC) adds the terms “adequate rest”. “Mobile worker” is any worker employed as a member of travelling or flying personnel by an undertaking that operates transport services for passengers or goods by road, air, or inland waterway. “Offshore work” is work performed mainly on or from offshore installations.

EU Member States shall take measures to ensure that workers enjoy:

- the minimum daily rest period of 11 consecutive hours per period of 24 hours;
- the minimum period of one rest day on average immediately following the daily rest period in every seven-day period;
- for a daily period of work of more than six hours, a break as defined by the provisions of collective agreements, agreements concluded between social partners or national legislation;
- not less than four weeks’ annual paid holiday, qualification for which shall be determined by reference to national practice/legislation;
- an average weekly working period of not more than 48 hours, including the overtime for each seven-day period.

Normal hours of work for night workers must not exceed an average of eight hours in any 24-hour period. Workers shall be entitled to a free health check-up before being employed on night work and at regular intervals thereafter. Anyone suffering from health problems connected with night work must be transferred, wherever possible, to day work. Employers who regularly use night workers must duly inform the authorities responsible for health and safety matters. Night workers must enjoy a level of health and safety protection commensurate with the nature of their work. Protection and prevention facilities must be equivalent to those of other workers and must be available at all times.

Employers who organize work in accordance with a certain time schedule must abide by the general principle of adapting the work to people, especially in the case of monotonous tasks required to be performed in quick succession.

A transitional period of five years from 1 August 2004 has been laid down for doctors in training. During the first three years of the transitional period, the number of weekly working hours may not exceed an average of 58. Subsequently, in the two following years, it may not exceed an average of 56. A sixth transitional year may be granted to certain Member States. In this case, the ceiling is 52 weekly working hours. At the end of this transitional period, the ceiling will be 48 hours weekly.

EU Directive 2002/15/EC of 11 March 2002 concerns the organization of working time of persons performing mobile road transport activities.

See **Health and safety at work; Occupational safety at work; Night work; Night work (women); Night worker; Working time (ILO).**

Working time in the maritime sector (ships using Community ports)

When adopting EU Directive 93/104/EC, of 23 November 1993, concerning the organization of working time, the Council excluded sea transport from its scope because of the specific nature of the work (particularly long hours of work at sea). The bulk of the existing measures in the field of maritime transport are derived from international standards adopted by the International Maritime Organization (IMO) and the International Labour Organization (ILO). In 1995 the IMO adopted a revised International Convention on Standards of Training, Certification and Watch-keeping for Seafarers (STCW Convention), which notably provides for:

- minimum daily rest periods of ten hours every 24 hours, which cannot be split into more than two periods, and including one consecutive six-hour period at least;
- weekly rest time of at least 70 hours.

Likewise, in 1996 the ILO adopted the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and the 1996 Protocol to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Enforcement of the provisions contained in ILO Convention No. 180 is monitored on the basis of a table with the shipboard working arrangements; seafarers' records of hours of work and hours of rest; and the physical state of the seafarers (excessive fatigue as a result of excessive working hours).

At the European level, the Council has adopted Directive 1999/63/EC of 21 June 1999, giving effect to the agreement between the European Shipowners' Association (ECSA) and the Federation of European Transport Workers' Trade Unions (FETT) signed on 30 September 1998. This agreement concerns seafarers' hours of work on board ships flying a flag of a Member State of the European Union.

See Consolidated maritime labour Convention; Working time of seafarers.

Working time of seafarers

EU Directive 1999/63/EC of 21 June 1999, is intended to put into effect the European Agreement concluded on 30 September 1998 between the trade union and employers' organizations of the maritime transport sector – the European Community Ship-owners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) concerning the working time of seafarers. In accordance with Article 139, TEC (new Article III-106), these organizations presented to the Commission the negotiated agreement with a view to having it implemented by a Council directive. The agreement in question, comprised in an annex to the directive, applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of a Member State and is ordinarily engaged in commercial maritime

Glossary of labour law and industrial relations

operations. A ship that is on the register of two Member States is deemed to be registered in the State whose flag it flies.

Hours of work and rest are laid down as follows:

- either the maximum hours of work which must not exceed:
- 14 hours in any 24-hour period;
- 72 hours in any seven-day period;

or the minimum hours of rest which must not be less than:

- 10 hours in any 24-hour period;
- 77 hours in any seven-day period.

Hours of rest may not be divided into more than two periods, one of which must be at least six hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.

Seafarers are entitled to paid annual leave of at least four weeks, or a proportion thereof for periods of employment of less than one year. The minimum period of paid leave may not be replaced by an allowance in lieu.

Musters, firefighting and lifeboat drills, and drills prescribed by national laws and international instruments must be conducted in a manner that minimizes the disturbance of rest periods.

Seafarers under the age of 18 are not permitted to work at night (meaning a period of at least nine consecutive hours, including the interval from midnight to 5 a.m.). In addition, no person under 16 years of age is allowed to work on a ship. The master of a ship has the right to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. The master may also suspend the schedule of hours of work or hours of rest until the normal situation has been restored.

All seafarers must:

- possess a certificate attesting to their fitness for the work for which they are employed;
- have regular health assessments.

See Consolidated maritime labour Convention; Working time in the maritime sector (ships using Community ports).

World Commission on the Social Dimension of Globalization

This was established by the ILO in February 2002, at the initiative of Juan Somavia, Director-General of the ILO, in response to the needs of people trying

to cope with the unprecedented changes that globalization has brought about in their lives. The World Commission report, *A fair globalization – Creating opportunities for all*, argues that persistent imbalances in the current working of the global economy are both ethically unacceptable and politically unsustainable. The vision put forward by the Commission is to bring into being a system of governance that is supportive of and conducive to national development strategies, where powerful actors are held accountable and where the economic objectives would place the needs and aspirations of ordinary people at the centre of rules and policies. The Commission was co-chaired by the Presidents of Finland and of the United Republic of Tanzania.

See Social clause; Social dimension of the liberalization of international trade.

World Confederation of Labour (WCL)

The WCL was founded in 1920 in The Hague (Netherlands). It unites 144 trade unions from 116 countries all over the world, and has over 26 million members, mainly from Third World countries. It draws its inspiration from humanist, ethical and moral values and protects the interests of workers throughout the world. Its member organizations of the South are regionally organized: the Brotherhood of Asian Trade Unionists (BATU) in Asia; the Central Latinoamericana de Trabajadores (CLAT) in Latin America and the Caribbean; and the Democratic Organization of African Workers' Trade Unions (DOAWTU) in Africa. The European organizations of the WCL, members or candidate members of the European Trade Union Confederation (ETUC), consult each other regularly. The activities and presence of the WCL in North America is coordinated by the National Alliance of Postal and Federal Employees (NAPFE). The WCL has obtained consultative status, category A, within the International Labour Organization (ILO), the United Nations Economic and Social Committee (ECOSOC), and other international organizations.

See European Trade Union Confederation (ETUC).

World Trade Organization (WTO)

The WTO was established on 1 January 1995 as the successor to the GATT (General Agreement on Tariffs and Trade) and its secretariat. The GATT now is one of the agreements administered by the WTO. The two other main agreements it manages are the GATS (General Agreement on Trade in Services) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In October 2004, the WTO had 148 members. It is an organization for the discussion, negotiation and resolution of trade issues covering goods, services and intellectual property. Its essential functions are administering and implementing the multilateral and plurilateral trade agreements that constitute it, acting as a forum for multilateral trade negotiations, seeking to resolve trade

disputes, overseeing national trade policies and cooperating with other international institutions involved in global economic policy-making.

See **General Agreement on Tariffs and Trade (GATT)**; **Social clause**; **Social dimension of the liberalization of international trade**; **Social dumping**; **Trade and labour standards**.

Worst forms of child labour

Each ILO Member State that ratifies the Worst Forms of Child Labour Convention, No. 182 (1999), shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. For the purposes of this Convention, the term “child” shall apply to all persons under the age of 18 and the term “the worst forms of child labour” comprises:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Each Member State shall establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention, and shall design and implement programmes of action to eliminate as a priority the worst forms of child labour. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers’ and workers’ organizations, taking into consideration the views of other concerned groups as appropriate.

Each Member State shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- prevent the engagement of children in the worst forms of child labour;
- provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

- identify and reach out to children at special risk; and
- take account of the special situation of girls.

Finally, Member States shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

See **Child; Child labour; Childcare; Minimum Age; Minor; Trafficking.**

X

Xenophobia

The fear of foreigners. It is contrary to the fundamental principles of liberty, democracy and respect for human rights upon which the European Union is founded.

See **Racism and xenophobia.**

Y

Yellow union

A union that is established by and/or under the influence and control of an employer.

Young person

Any person under 18 years of age.

See **Child; Child labour; Health and safety at work; Minor; Protection of young people at work.**

Youth

In recent decades, Article 149, TEC (new Article III-182), has constituted the legal basis for cooperation at the European level, allowing various Community actions which directly or indirectly concern young people. This has been possible in the fields of education, youth exchanges and mobility, employment and training, and more recently, access to information technology. In 1988, the European Union (EU) launched the action programme Youth for Europe in order to support youth exchanges. In 1996, the Commission proposed a programme of Community action concerning a European Voluntary Service for young people. Both these programmes were incorporated into the Youth programme for the period 2000-06. The Youth programme is also intended to encourage debate between EU Member States on drafting a proper youth policy.

The White Paper on Youth was the result of a wide-ranging consultation at national and European levels. With enlargement, Europe has 75 million young people in the 15-25 age group, and its population will undergo economic and social changes that will bring about qualitative and quantitative changes in relations between generations. The White Paper is thus a response to young people's strong disaffection with the traditional forms of participation in public life, and it calls on young Europeans to become active citizens. Active citizenship is possible only in an institutional framework that is attentive to the needs of young people, capable of responding to their needs and able to provide them with the means to express their ideas and to make a greater contribution to society.

In order to help the Member States and the regions of Europe to take action for young people in Europe, the White Paper proposes a new framework for cooperation, consisting of two components: increasing cooperation between

Member States and taking greater account of the youth factor in sectoral policies. The White Paper is also the result of a legislative process in which the European institutions, and the Council in particular, have been active in drawing up resolutions, such as those on the participation of young people, social inclusion of young people, and development of a sense of initiative, entrepreneurship and creativity, which are an innovative factor in European youth policy.

Finally, following the introduction of the declaration on the importance of sport in the Amsterdam Treaty (1997), the EU developed an active role in sport. In this new role, it supported projects such as those on the integration of young people via sports, the fight against doping in sport and a school information campaign on the ethical values channelled by sport.

See **Professional training; Protection of young people at work; Vocational training; Youth employment.**

Youth employment

The protection of youth and employment promotion are two major aspects of the mandate of the International Labour Organization (ILO). While most ILO instruments are applicable to young people, some are particularly important as they address fundamental human rights at work or contain provisions specific to youth employment.

Many ILO instruments call for specific protective measures for young workers – i.e. workers who have not attained 18 years of age – in terms of working conditions and occupational safety and health. Some are especially designed for that purpose, such as Conventions and Recommendations on night work or medical examination of young persons. A number of instruments of general application provide for special measures for young workers. This is the case, for instance, of the instruments on occupational safety and health, which contain provisions to prevent or limit the exposure of young persons to specific occupational hazards.

The Employment Policy Convention, 1964 (No. 122), is the leading ILO instrument for employment promotion. Its accompanying Recommendation (No. 122) calls for “special priority” to be given to “measures designed to remedy the serious, and in some countries growing, problem of unemployment among young people”. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), details special measures that should be taken to assist young people in finding their first job and to ease the transition from school to work. It also makes the important point that these measures should be “carefully monitored to ensure that they result in beneficial effect on young people’s employment” and that they should be consistent with the conditions of employment established under national law and practice.

Other instruments relevant to the promotion of youth employment include the Employment Service Convention, 1948 (No. 88), which provides for special

arrangements for youth to be initiated and developed within the framework of the employment and vocational guidance services. The Employment Service Recommendation, 1948 (No. 83), adds that special efforts should be made to encourage young people to register for employment and to attend employment interviews. The Human Resources Development Convention, 1975 (No. 142), requires the gradual extension of vocational guidance and training systems closely linked with employment to meet the needs throughout life of both young persons and adults. In accordance with the Human Resources Development Recommendation, 2004 (No. 195), access of youth to education, training and lifelong learning should be promoted.

The Special Youth Schemes Recommendation, 1970 (No. 136), was adopted to specifically address the promotion of youth employment. It applies to “special schemes designed to enable young persons to take part in activities directed to the economic and social development of their country”.

Within the framework of the Millennium Declaration (September 2000), the United Nations Secretary-General convened, together with the Director-General of the ILO and the President of the World Bank, the Youth Employment Network (YEN), and appointed 12 eminent persons as the High-Level Panel members responsible for preparing a set of policy recommendations. The Panel’s recommendations were discussed in the General Assembly in 2001. They encourage Heads of State and Government to develop national action plans on youth employment, based on a critical review of past and present initiatives, and through a process of wide consultation with employers’ organizations, trade unions, youth groups and other civil society groups. The recommendations identify four global priorities for national action: employability; equal opportunities for young men and young women; entrepreneurship; and employment creation. Since September 2002, the ILO has been hosting the YEN permanent secretariat and has taken the lead in organizing its work.

See **Child labour; Employment policy; Employment services; Human resources development; Minimum age; Occupational safety and health; Worst forms of child labour.**

Youth Employment Network *see* **Youth employment.**

